

Licensing Framework for Unified Carrier Licence

A Consultation Paper by the Telecommunications Authority

21 December 2007

INTRODUCTION

The Telecommunications Authority (“TA”) issued a Consultation Paper in September 2005 on the review of regulatory issues in relation to fixed-mobile convergence (“FMC”) (“first FMC consultation paper”). The focus of that paper was to solicit public views on the proposed introduction of a Unified Carrier Licence (“UCL”) for authorization of fixed, mobile and/or converged services under the same licensing regime. Subsequently, the TA issued a second consultation paper on FMC on 14 July 2006 (“second FMC consultation paper”) which, among other issues, invited the industry and interested parties to submit further views on the proposed UCL and other FMC related issues. Having considered the submissions in response to the two FMC consultation exercises, the TA concluded in the Statement on “Deregulation for Fixed-Mobile Convergence” issued on 27 April 2007 (“FMC Statement”) that he would recommend the Secretary for Commerce and Economic Development (“Secretary”) to create the UCL by subsidiary legislation under section 7(2) of the Telecommunications Ordinance (“Ordinance”).

2. Under section 7(3) of the Ordinance, the Secretary has published a notice in the gazette on 21 December 2007 inviting members of the public to make representations in relation to a consultation paper entitled “Consultation Paper on the Creation of A Unified Carrier Licence under the Telecommunications Ordinance” (“Secretary’s consultation paper”)¹ that he has issued on the same day. The Secretary’s consultation paper sets out his proposal for creating the UCL as a new form of carrier licence, and it covers the general conditions (GCs), period of validity and licence fee for the UCL. The deadline for the public to make representation is 20 February 2008.

¹ The Secretary’s consultation paper can be downloaded at the website of Commerce and Economic Development Bureau at www.cedb.gov.hk/ctb.

3. Pursuant to section 7A of the Ordinance, the TA may attach special conditions (SCs), consistent with the Ordinance and not inconsistent with the prescribed GCs, to a licence that the TA is empowered to issue including SCs of a carrier licence. This consultation paper sets out detailed proposals regarding the licensing framework to be adopted for granting of UCL by the TA. The proposals include the SCs that the TA intends to attach to UCLs, the general approach for granting a UCL under different scenarios and the arrangement for migration of existing carrier licences to UCLs. The proposed arrangement for replacement of the four fixed telecommunications network service (“FTNS”) / fixed carrier licences (“FCLs”) which were issued in 1995 and which will expire in 2010, and the conversion of existing mobile carrier licences (“MCLs”) and other FCLs to UCLs will also be addressed in this paper.

4. Interested parties are invited to read the Secretary’s consultation paper in conjunction with this consultation paper. For the avoidance of doubt, all the views expressed in this consultation paper are for the purpose of discussion and consultation with the public and industry only. Nothing in this consultation paper represents or constitutes any decision made by the TA, the Secretary, or the Government and the consultation contemplated by this paper is without prejudice to exercise of their powers under the Ordinance or any subsidiary legislation.

LICENSING FRAMEWORK FOR THE UNIFIED CARRIER LICENCE

SCOPE OF SERVICE

5. According to the proposal in the Secretary’s consultation paper, services which may be authorized under the UCL will cover those services which may be authorized under the existing FTNS licence/FCL², mobile carrier licence (“MCL”), fixed carrier (restricted) licence (“FCRL”) and mobile carrier (restricted) licence (“MCRL”). These licences are all prescribed under the Telecommunications (Carrier Licences) Regulation (Cap 106V) (the “Regulation”)³.

² FCL hereafter referred in this paper includes FTNS licence.

³ The Secretary’s consultation paper indicates that the existing Space Station Carrier Licence (“SSCL”), which allows the licensee to establish, possess, maintain, use and operate a space station or earth

6. A summary of the types of services covered by the existing FCL, FCRL, MCL and MCRL which can be authorized under the UCL is given in Annex A. An applicant for UCL may submit a proposal to operate any individual service within the scope of UCL. The TA has no intention to pre-set any limit on the number of unified carrier licensees, or any restriction on the type of service which may be authorized under the UCL, except where there are constraints due to scarce resource such as radio spectrum. The scope of service for an individual licensee will be specified in the schedule(s) to the licence with an appropriate set of licence conditions in accordance with the applicant's proposal for the service concerned. If the licensee wishes to operate other types of services not covered by its initial application, it may subsequently apply to the TA to expand the scope of service.

7. In the Statement on "Providing Radio Spectrum for Broadband Wireless Access Services" ("BWA Statement") issued on 3 December 2007, the TA made it clear that UCL will be used as a licensing vehicle for BWA services. Moreover, to allow versatile and sustainable developments by the BWA licensees over the term of the licence, there will be no restriction on the applications and services for the BWA licences i.e. the BWA licensees may provide any fixed, mobile and/or converged applications and services using the BWA spectrum under the UCL.

RIGHTS AND OBLIGATIONS

Rights

8. Subject to the types of services which may be authorized under a UCL, a unified carrier may be granted with specific rights commensurate with the scope of service of its licence. Those rights include:

- (a) Use of radio spectrum
- (b) Use of numbers
- (c) Road opening
- (d) Building access

station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications, will not be covered under the proposed unified carrier licensing regime.

Radio Spectrum

9. A unified carrier licensee should be able to acquire rights to use radio spectrum for deployment of wireless technologies to provide their services using the radio spectrum and radiocommunications installations approved by the TA. The licensees may acquire spectrum rights by making application to the TA for assignment of spectrum where there is no competing commercial demand⁴ or through an open, competitive bidding process for acquisition of spectrum where there is competing commercial demand⁵. For the avoidance of doubt, a holder of UCL will not be automatically granted spectrum right which shall be acquired separately.

10. Where a UCL is issued due to conversion of existing carrier licence(s), the unified carrier licensee may also inherit such legacy spectrum rights granted under the original carrier licence(s). For the avoidance of doubt, the period of validity of the UCL granted for conversion of an existing carrier licence shall not operate to extend the period for which any spectrum has been assigned to the licensee under the existing licence – the spectrum right under the existing licence with the same validity period as the existing licence will simply be transferred to the new UCL. This applies irrespective of whether the UCL has a validity period same as the remaining term of the original carrier licence, or the UCL has a full validity period of 15 years. In other words, it means that the validity period of the existing spectrum right transferred to the UCL may be shorter than the validity period of the UCL. According to the Spectrum Policy Framework announced by the Government in April 2007 (“Spectrum

⁴ Under the guidance of the Spectrum Policy Framework promulgated by the Government in April 2007, the TA will publish and regularly update information on unassigned spectrum for which supply exceeds demand, and can readily be made available for assignment. Such information has been published in the Hong Kong Table of Frequency Allocations (<http://www.ofta.gov.hk/en/freq-spec/freq-allocations.pdf>).

⁵ In accordance with the guiding principle under the Spectrum Policy Framework, the TA will use a market-based approach for management of spectrum wherever the TA considers that there are likely to be competing demands from providers of non-Government services, unless there are overriding public policy reasons to do otherwise. The market-based approach implies that a competitive bidding process will be used for assignment of spectrum where there are competing demands for non-Government applications. A spectrum release plan about the potential supply of spectrum from the TA through an open, competitive bidding or tendering process in the following three years has been published by the TA (<http://www.ofta.gov.hk/en/freq-spec/plan2007.pdf>).

Policy Framework”), there is no legitimate expectation that there will be any right of renewal or right of first refusal of any licence or spectrum assignment upon the expiry of a licence or spectrum assignment under the Ordinance. The TA will take guidance from the Spectrum Policy Framework in deciding whether to assign the same or varied radio frequencies when the spectrum right expires. Holders of carrier licences with spectrum right should not therefore have any legitimate expectation of the spectrum right being extended or renewed automatically upon expiry of assignment even if the UCL has not expired. In addition, as a matter of principle, the transfer of spectrum right from an existing carrier licence to UCL will be accompanied by the transfer of associated obligations imposed on the licensee at the time when it acquired the spectrum right⁶.

11. New spectrum right may also be acquired by a UCL holder from time to time during the validity period of the UCL, and the validity period of the new spectrum right may be longer than that of the UCL. In this case, the assignee of the spectrum should hold a valid licence issued by the TA for using the spectrum at any time. In the longer term, the TA will explore the feasibility of enhancing the present regulatory regime to allow the separate authorization of the establishment and operation of the network/service platform, and the right to use spectrum⁷.

Numbers

12. Same as existing fixed and mobile carrier licensees, a unified carrier licensee is entitled to apply for allocation of telecommunications numbers and

⁶ Certain licence conditions under the existing 3G / 2G MCLs, such as payment of spectrum utilization fee, performance bond, ownership and control, disposal of assets, compliance with auction rules, anti-avoidance provisions and open network access, are licence obligations related to the right to use spectrum acquired through bidding in an auction or administrative assignment by the TA. For more details on transplanting of such obligations when the existing MCLs are converted into UCLs, please see paragraph 94 of this consultation paper.

⁷ The separation of network / service licences and rights to use spectrum was one of the recommendations made by the consultant engaged by the Government to assist in the spectrum policy review in 2006. See the Consultancy Report on Spectrum Policy Review at http://www.cedb.gov.hk/ctb/eng/paper/pdf/SPR-Final_report.pdf

codes in the Numbering Plan for Telecommunications Services in Hong Kong⁸ (“Hong Kong Numbering Plan”) in accordance with the existing procedure if the services to be provided require the use of telecommunications numbers or codes. They shall use numbers and codes for provision of their services in compliance with such guidelines and codes of practice issued by the TA. Where a UCL is issued due to conversion of existing carrier licences, the unified carrier licensee will be entitled to continue using such numbers and codes allocated under the original carrier licences.

13. In the BWA Statement, the TA has concluded that no special prefix will be allocated for FMC services and that the existing arrangement will continue. That is, fixed services will continue to be allocated with fixed numbers with prefixes “2” and “3” while mobile services will continue to be allocated with mobile numbers with prefixes “6” and “9”. When the prefixes “6” and “9” are depleted, the TA will open up numbers with prefix “5” for mobile services.

14. Under the UCL, different types of fixed or mobile services may be provided by a unified carrier. The existing arrangement of number allocation will be applied to the fixed and mobile services under the UCL. When a unified carrier applies to the TA for allocating numbers for a particular telecommunications service, the TA will assess the nature of the service and determine whether fixed or mobile numbers should be allocated.

Road Opening

15. At present, only FC licensees are entitled to road opening right. The four fixed network operators (“FNOs”) licensed in 1995⁹ and Hong Kong Cable Television Limited (“HKCTV”) are granted with road opening right in general. Local wireline-based FNOs licensed after the full liberalisation of the local fixed telecommunications market in 2003 are required to seek the TA’s

⁸ The Numbering Plan for Telecommunications Services in Hong Kong is published by the TA on OFTA’s website. It specifies the number allocations for different types of telecommunications services to telecommunications licensees for provision of telecommunications services in Hong Kong.

⁹ The four FNOs are PCCW-HKT Telephone Limited (“PCCW”), Hutchison Global Communications Limited (“HGC”), Wharf T&T Limited (“WTT”) and New World Telecommunications Limited (“NWT”).

approval on a case-by-case basis on road opening works. All licensees authorized to carry out road opening works are required to follow the coordination mechanism set out in the “Guidelines for Road Opening for Telecommunications / Broadcasting Operators” (“Road Opening Guidelines”).

16. In the FMC Statement¹⁰, the TA has concluded that the right of road opening will only be reserved to those operators that are authorized under their licences to provide public wireline-based services. According to the FMC Statement, approval of road opening will be granted on a case-by-case basis to a unified carrier which is authorized to provide fixed services under its licence and which demonstrates that it is rolling out a wireline-based infrastructure.

Building Access

16. At present, the four FNOs licensed in 1995 and HKCTV have been granted with rights of building access in general. Like road opening, new FNOs are granted with such rights on a case-by-case basis. The TA concluded in the FMC Statement that the building access rights to be granted under the UCL will follow the same existing principles depending on the nature of the particular installation. In other words, the rights of building access will be granted to a unified carrier on a case-by-case basis subject to the technology it uses for an installation in a building, whether the installation is for serving the residents and occupants of that building and whether there are difficulties to obtain building access agreements from the property management companies or building developers. The respective building access rights of carriers that are authorized under their licences to provide public wireline-based services and carriers that are authorized under their licences to provide public radiocommunications services are governed by the legislation which shall prevail unless and until legislative amendment to section 14(1) is made.

General Conditions (“GC”) of UCL

18. The GCs for UCL are prescribed by regulation. According to the Secretary’s proposal, the GCs of UCL would be the same as those of the existing FCL, FCRL, MCL and MCRL. The proposed GCs of UCL are given in

¹⁰ See paragraph 182 of the FMC Statement of 27 April 2007.

Appendix B of the Secretary's consultation paper. Interested parties may send their relevant comments in response to the Secretary's consultation paper to the Secretary direct.

Special Conditions ("SC") of UCL

19. In the first FMC consultation paper, a set of SCs is proposed in the sample UCL annexed to the paper. Taking into account the comments received from the respondents in the two FMC consultations and as a result of further consideration by the TA, a revised set of SCs is now set out in Annex B of this paper. These SCs are basically modelled on corresponding SCs in the existing FCLs and MCLs, and information on their origins is given in Annex C. The TA considers that the proposed SCs in Annex B should be a common set of SCs to be applied to all unified carrier licensees subject to the transplanting of special rights and obligations from the existing licences as discussed in the later part of this paper. Some of the more pertinent issues in relation to the proposed SCs are discussed below.

Compliance with Codes of Practice (SC 1)

20. Under the proposed SC 1, the TA may issue guidelines or codes of practice (CoPs) to give practical guidance to the licensee on any particular aspects of any licence conditions (under SC 1.1) as well as the areas (specified under SC 1.2) in respect of :

- (a) the provision of satisfactory service
- (b) the protection of customer information
- (c) the protection and promotion of the interests of consumers of telecommunications goods and services
- (d) calling line identification and other calling line identification related services

21. Among the submissions to the two FMC consultations, New World Telecommunications Limited ("NWT") objected to expansion of TA's powers and jurisdiction beyond the Ordinance into unspecified consumer issues. It argued that the TA has no general legal power to issue codes of practice, such power being limited to matters relating to numbering plan and interconnection.

22. NWT has taken a restricted view on the construction of power

exercisable by the TA. Under Section 7A of the Ordinance, the TA may attach SCs consistent with the Ordinance and not inconsistent with the prescribed GCs. As a matter of fact, similar SCs were already included in MCLs for second generation (“2G”) mobile services issued in 2005 and 2006 and the services-based operator (“SBO”) licence, after full consultation with the industry. Since the overall number of consumer complaints about telecommunications services in recent years consistently remains high, as reflected by the Consumer Council’s complaint statistics¹¹, the SC is considered necessary as it will provide practical guidance to carrier licensees to address public concerns on customer-related issues.

23. As laid down in the proposed SC 1.3, before issuing any CoP or guideline, the TA shall carry out the relevant consultation. The industry will be engaged and informed on the development of such specific practical guidance. Having considered the previous submissions of the industry, the TA considers that SC 1 should be imposed as a common requirement for all unified carriers.

Question (1): Do you agree that the TA may issue practical guidance in the form of guidelines and CoPs for compliance by unified carriers under the proposed SC 1 ?

Requirements for Interconnection: Any to Any Connectivity (SC 3)

24. The FMC Statement has given a full account of the fundamental importance of the any-to-any (“A2A”) principle underlying the interconnection regime¹². A2A connectivity is an important public policy objective that is based upon the long-standing expectation of the public that any telecommunications user can communicate with any other user. The requirement of A2A is an internationally recognised principle and adopted by other administrations. The absence of a universal ability by a telecommunications user to call any other user would severely undermine Hong Kong as a regional telecommunications hub and more importantly as an international finance and commerce centre. In fact, according to submissions

¹¹ According to the complaint statistics of Consumer Council, among 35962 consumer complaints received in 2006, 11801 cases (32.8% of total cases) are related to telecommunications services (<http://www2.consumer.org.hk/news/complaintstatistics/monthlyupdate.pdf>).

¹² See paragraphs 97-103 in the FMC Statement.

received, there was no objection to maintain such requirement for unified carriers same as for existing fixed or mobile carriers.

25. The requirement for interconnection under the proposed SC 3 is a common obligation that already appears in similar format in the existing carrier licences. Under SC 3.2 in all existing FCLs and MCLs, the licensees are obliged to negotiate commercially and settle the terms and conditions of interconnection between it and the other parties such that interconnection is effected promptly, efficiently and based on relevant reasonable costs. If the parties cannot reach agreement in a timely fashion, the parties shall maintain interconnection and may seek determination from the TA under Section 36A of the Ordinance¹³. As certain recent disputes in relation to interconnection have demonstrated, an unequivocal obligation to interconnect is important in order to secure interconnection of existing networks and services in a prompt and efficient manner. Such a licence obligation would serve to minimise any adverse impact that a failure to interconnect between two networks may otherwise have on the consumers and the business community.

26. The A2A principle has been articulated in the Statements issued by the TA on “Interconnection and Related Competition Issues”. In Statement No. 6 (Revised) on “Interconnection Configurations and Basic Underlying Principles” (18 March 2002), the principle of “any-to-any” is applied for Type I interconnection among fixed telecommunications networks and is explained as follows:

“Principle of “any to any” - Interconnection between fixed telecommunications networks shall be carried out in such a way that any customer in any one network can have access to any other customer or any service offered in any interconnecting network”.

Furthermore, in Statement No. 4 (Revised) on “Carrier-to-Carrier Relationship” (18 March 2002), Principle No. 7 states that

“Any customer of any FTNS licensee should be able to call any other customer of another FTNS licensee on a non-discriminatory basis, i.e.

¹³ Further details on the proposed interconnection charging regime for a unified carrier are given in paragraphs 60 to 63 of this consultation paper.

the ‘any to any’ principle of symmetrical interworking. Further, to the extent possible, call progression between and within networks should be ‘transparent’ and ‘seamless’ to both the calling and called parties.”

27. The prevailing regulatory guidance given by the TA has already pointed out that the A2A principle has a customer-oriented focus and a technology neutral basis. Irrespective of the types of services and networks which they provide and operate, the carriers should have an obligation to interconnect with each other¹⁴ so that customers may have seamless and transparent access to any other customers or any telecommunications services, whether the customers or services to be accessed are located on the same or a different network.

28. Under the existing regime, operators are expected to ensure A2A connectivity and the TA is granted powers to compel them to do so by intervening as a last resort. Under the Ordinance, interim terms can be specified by the TA in a section 36B direction which may be replaced by a subsequent section 36A determination which is capable of being applied retrospectively. The power of the TA to enforce A2A will be exercised sparingly leaving the market to resolve as many of the issues as it can without regulatory intervention. Should an intervention to achieve A2A be necessary, the TA may direct interconnection pursuant to section 36B of the Ordinance, on terms and conditions (subsequently) determined by agreement or the TA pursuant to section 36A of the Ordinance.

Question (2): Do you agree with the proposed SC 3 and the express statement of the A2A principle in the licence condition ?

Numbering Plan and Number Portability (SC 4)

29. Currently, FC licensees are directed to facilitate both Operator Number Portability (“ONP”) and Mobile Number Portability (“MNP”), and they have the right to access both databases. Except for the four FNOs

¹⁴ It should be noted that such interconnection may be achieved by various configurations, including direct or indirect modes of interconnections between two networks. The TA has never mandated any particular configuration to be adopted by carriers as long as the A2A connectivity is achieved.

licensed in 1995¹⁵, new FNOs licensed after year 2000 are required to facilitate ONP and MNP at their own expenses¹⁶. MC licensees are directed to facilitate MNP only and until now they can have access to MNP database only¹⁷ but not the ONP database.

30. In the FMC Statement, the TA concluded that (1) he will conduct market research to ascertain the consumer demand for Fixed-Mobile Number Portability (“FMNP”) and assess the cost / benefits before deciding whether to implement FMNP; (2) all carriers should have access to all number porting data, i.e. both ONP and MNP databases; (3) review shall be conducted on the feasibility and detailed arrangement of a centralised database to support number portability. In line with such conclusions, the TA proposes to include a SC in the UCL to meet the following requirements¹⁸:

- a unified carrier licensee is obliged under the licence to facilitate ONP and MNP at its own expenses. This obligation will be accompanied by the right to have access to both ONP and MNP databases
- the TA may direct a unified carrier licensee to facilitate FMNP at its own expense should the TA decide to implement FMNP in the future
- a unified carrier licensee may be directed to facilitate number porting by such technical arrangement as may be specified by the TA, including the arrangement using a centralised database

Question (3): Do you have any comments on the SC 4 which specifies the requirements in relation to number portability and numbering plan for compliance by a unified carrier ?

¹⁵ The four FNOs licensed in 1995 are not required to bear the costs incurred for facilitating MNP and they therefore have the right to levy MNP charges on MNOs.

¹⁶ Such obligations are specified under the concerned FCLs and/or directions to the concerned licensees for facilitating ONP and MNP.

¹⁷ In November 2004, the TA advised the fixed and mobile carriers that the latter might also have access to ONP database through a fixed carrier as the maintenance agent so that they might route calls from mobile customers to the fixed networks in a more efficient manner. In the FMC Statement, the TA concluded that all carriers (fixed or mobile) should have access to all number porting data, and OFTA would convene a working group to examine technical issues concerning the requirement from mobile network operators to have access to ONP database.

¹⁸ These requirements in fact already apply for the MCL to be issued to the successful bidder of the CDMA2000 spectrum.

Tariff Publication (SC 7)

31. In the first FMC consultation paper, it was proposed that the unified carriers should be subject to tariff publication requirements similar to those applied for existing fixed and mobile carriers. The following five methods¹⁹ of tariff publication were proposed as a blanket requirement for all unified carrier licensees:

- (1) publish tariffs in the Hong Kong Government Gazette;
- (2) provide a copy of tariffs to the TA;
- (3) place a copy of tariffs in a publicly accessible part of the principal place of business and other business premises of the licensee as specified by the TA;
- (4) supply a copy of tariffs to any person who may request it at a charge no greater than that which is necessary to cover the reasonable costs of supplying the copy; and
- (5) publish on the licensee's website

Furthermore, the TA had proposed that some of the above requirements can be waived by the TA for a licensee if it is considered appropriate.

32. Among those submissions received, CM Tel supported the TA's proposal but NWT, Peoples and PCCW considered that the gazetting requirement should be abolished. NWT also suggested that (a) a unified publication requirement should be applied for both service providers and carriers; (b) publication of tariffs should be required only on the service providers' company website; and (c) the Office of the Telecommunications Authority ("OFTA") should maintain a unified database of tariffs of all carriers and service providers in a user-friendly, searchable format.

33. The TA has received feedbacks from the industry that publication in the Gazette (i.e. Method (1) above) is not a cost-effective means of disseminating tariff information to the public. Further, the gazetting requirement now applies to the FNOs but not to the MNOs. In the converged environment, the TA considers that the tariff publication requirements should

¹⁹ The mobile carrier licensees providing third generation ("3G") mobile services are required to publish their tariffs in the newspapers. In the first FMC consultation paper, in view of the comments from some operators that publication in the newspapers is more expensive than publication in the Gazette and that it is more difficult to keep track of the published tariffs if they are published in the newspapers, the TA did not propose to require unified carriers to publish tariffs in the newspapers.

be aligned for operators of fixed and mobile services. Methods (2) – (5) together would appear to serve the purpose of providing transparent information on tariffs to customers and allowing a traceable record of published tariffs to be maintained. The TA will consider removal of the gazetting requirement from the proposed SC 7 altogether if the industry, the customers and other interested parties are supportive of this idea.

Question (4): Do you have any concern if the requirement to publish tariffs in the Government Gazette is waived or abolished for unified carriers and that they should only be required to publish tariffs using all of the Methods (2) – (5) in paragraph 31 ?

Ex post Tariff Regulation and Notification of Discounts (SC 8)

35. In the first FMC consultation paper, the TA proposed that an *ex post* regime for tariff regulation should be adopted under a UCL, i.e. there is no prior approval requirement for introducing new / revised tariffs or discounts by the licensee. The *ex post* tariff regulation approach was generally supported by the submissions to the two FMC consultation papers.

36. Under the present *ex post* FCL, although there is no prior approval requirement for the tariffs and discounts of a FC licensee, the licensee is required to notify the TA of discounts to its published tariffs offered for any of the services operated under the licence, other than those services listed in a schedule attached to the licence. This is to ensure that the TA may continue to monitor closely the price competition in the market and if necessary to carry out any appropriate *ex post* investigation in a timely manner. The notification regime has proved to work well for the *ex post* FCLs²⁰ issued by the TA. Therefore, the TA proposes to maintain the notification requirement as a standard obligation under the UCL. Under the proposed SC 8, a unified carrier will be obliged to notify the TA of discounts to its published tariffs offered for any of the services except for those services listed in a schedule attached to the licence.

Question (5): Do you agree that there is a need to maintain a notification

²⁰ Two *ex post* FCL have been issued to PCCW-HKT Telephone Limited (“PCCW”) and Reach Networks Hong Kong Limited, Reach Cable Networks Limited and Reach Global Services Limited as a Group (“Reach”).

requirement for tariff discounts offered by a unified carrier ?

Billing and Metering Accuracy (SC 9)

37. At present, there is a standard obligation under the FCL and MCL to ensure metering accuracy. Pursuant to this obligation, the TA decided in 2000 that a Billing and Metering Integrity Scheme (“BMIS”) should be implemented in Hong Kong in order to enhance the confidence of the customers on billing accuracy of the industry²¹. Under BMIS, operators shall perform billing and metering measurements and submit regular measurement reports to the TA. Participation in the BMIS had originally been mandatory for fixed carriers, mobile carriers and mobile virtual network operators (“MVNO”), while dial-up Internet Service Providers (“ISPs”), International Value-Added Network Services (“IVANS”) operators and External Telecommunications Services (“ETS”) operators might participate in the scheme on a voluntary basis. Subsequent to a review of the implementation of the scheme in 2005, the TA concluded that the mandatory requirement imposed on fixed carriers, mobile carriers and MVNOs would be removed starting from 2006²² and that the voluntary participation in the scheme should be extended to all operators. The TA made it clear that he would regularly monitor the market development as well as the complaint situation to assess the effectiveness of the full voluntary scheme. The TA would consider the re-introduction of the mandatory scheme if he considers that there is significant public interest for him to do so. However, operators not participating in the voluntary BMIS are still bound by their licence conditions to ensure accurate and reliable metering for billing purposes²³. The TA considers that billing and metering accuracy, being an important requirement to protect consumer interest, should apply to UCL and a corresponding SC modelled on the existing condition in FCL and MCL should be included.

Question (6): Do you agree that there is a need to maintain an obligation to ensure billing and metering accuracy by a unified carrier ?

²¹ See the Statement on “Billing and Metering Accuracy of Public Telecommunications Services in Hong Kong” issued by the TA on 4 August 2000.

²² See the Statement on “Billing and Metering Integrity Scheme” issued by the TA on 23 November 2005.

²³ See paragraph 23 of the Statement on “Billing and Metering Integrity Scheme” issued by the TA on 23 November 2005.

Directory Information and Directory Information Services (SC 11)

38. The current requirements on the provision of printed directory and directory enquiry service (collectively referred to as “directory services”) are summarised below:

- FC licensees shall provide printed directory and directory enquiry service to all of their customers²⁴ free of charge
- FC licensees shall exchange raw directory data to establish a unified directory database
- MC licensees have not been directed²⁵ to provide directory services to mobile customers
- MC licensees have not been directed to provide raw directory data to other MC or FC licensees, such that mobile customers are not included in the unified database maintained by FC licensees

39. In the first FMC consultation paper, the following proposals were given for the unified licensing regime:

- Maintain the *status quo* for directory services in the new unified regime, i.e. a unified carrier will not be required to provide directory services to mobile customers and the directory database will not include information of mobile customers
- Converged services with limited mobility would be treated like “fixed services” in the requirements for the provision of directory services
- If there is evidence showing that the actual demand for printed directory (i.e. “White Pages”) is minimal, the TA may consider waiving the requirement to provide printed directory for fixed customers.

40. Among the FMC submissions, Peoples basically agreed with the TA’s views. CM Tel had reservation on maintaining the *status quo* (i.e. providing directory enquiry service for fixed customers only) for the unified licensees. Towngas considered that it was difficult to judge whether a converged service

²⁴ IP Telephony Class 2 services provided by the fixed operators are exempted from the directory requirements, but at present no Class 2 service is being provided by the fixed operators.

²⁵ MCL contains a licence condition requiring the licensee to provide directory information service as and when directed by the TA.

with limited mobility should be treated as a fixed service; and that the provision of directory services should not be service dependent (whether it is a fixed or mobile service) and should be left to the market provided a unified database is maintained with choice of information disclosure by the customers. PCCW considered that no licensee should be obliged to provide free telephone directory enquiry service which should be treated as a value added service which may be chargeable to customer. NWT, CM Tel and PCCW supported that the obligation to provide printed directory should be waived, while NWT suggested that the provision of online White Pages should be encouraged by ensuring the completeness and accuracy of the directory database. NWT also considered that the TA's power to determine the amount of compensation and mode of exchange for directory information is arguably too narrow; that appropriate amendment, whether in the Ordinance, licence or otherwise, should be made to allow the TA to determine all the terms and conditions of exchange of directory information.

41. The provision of directory services is a complex subject with a dimension of the expectation of the general public and universal service obligation²⁶. A thorough review is needed before any change to the existing regime is to be made. The review may address issues like:

- whether the provision of directory services for fixed services should continue to be required;
- whether there is a need to extend the requirement to mobile services;
- whether there is a need for printed directory;
- whether printed directory can be replaced by electronic means and whether it can be provided at a fee ;
- whether directory enquiry service can be provided at a fee;
- whether directory enquiry service should be maintained as part of the “basic service” under universal service obligation;
- whether a unified directory database should be maintained, what information should be maintained (fixed, mobile, converged customers), and in what form (centralised vs decentralised)

²⁶ Under Section 2 of the Ordinance, “operator provided directory enquiries” is as part of “basic service” to be provided by a licensee having the USO under Section 35B. In the recent conclusion of a review on the universal service arrangement, the TA has concluded in the TA Statement of 8 June 2007 that the TA will not pursue for the time being the removal of directory enquiry (“DQ”) service from the scope of “basic service” under the USO. Further studies, including survey on the community expectation and usage of DQ service if necessary, are required on the continuation of free DQ service to all customers under SC 10 and GC 25 and as part of the “basic service”.

should it be maintained; and

- whether the TA should be empowered to make determination on all terms and conditions for the provision of raw directory information, other than the amount of compensation for provision of or the reasonable mode of exchange and transmission format of raw directory information as specified under the relevant condition of existing fixed and mobile carrier licences

42. Pending for such review, which may be made by stages²⁷, the original proposal in the first FMC consultation paper can be retained, i.e. to maintain the *status quo* under the unified regime such that a unified carrier shall be obliged to provide directory services for subscribers of fixed or limited mobility services only. In the proposed SC 11 of the UCL, the obligations to provide both printed directory and directory enquiry service are subject to “where and as directed by the Authority”. The TA intends to issue directions under SC 11 to maintain the current arrangement as stated in paragraph 37 above but will keep the matter under review²⁸. In the mean time, some minor update to the original form of SC 11 are proposed to clarify (1) the concept of providing directory services using a unified database in the unified regime²⁹; (2) the language requirement for exchange of raw directory information³⁰ between carriers; and (3) the recovery of costs incurred by the TA in making a determination under SC 11.7 in relation to the provision of raw directory information³¹.

Question (7): Do you have any comments on the proposed SC 11 on directory

²⁷ The TA has made clear in the first FMC consultation paper that he is prepared to review the requirement for printed directory (or “White Pages”) first and to consider waiving such requirement if there is evidence showing that the actual customer demand for White Pages is minimal.

²⁸ The provision of directory services for Class 2 IP telephony service has already been specifically exempted under the UCL.

²⁹ The directory information in the unified database should refer to information for those customers of the unified licensee and other licensees as directed by the TA. Furthermore, it should be made explicit that the directory information should include those of SBO licensees (except Class 2 service).

³⁰ According to a principle established in two Supplementary Determinations by the TA in 2007, FC licensees exchanging raw directory information shall adopt a “transmission format” on an “as is” basis including all English and Chinese records.

³¹ A similar provision on recovery of TA’s costs is included in the proposed SC 13.3 under UCL in relation to determination on reasonable access to network information.

services ?

Question (8): Are there any pertinent issues other than those which are already identified to be addressed in a future review of directory services ?

Emergency Call Service (SC 12)

43. Existing fixed and mobile carriers³² are required to support emergency call service free-of-charge to any person using appropriate equipment connected to the networks of the carriers. The proposed SC 12 in the UCL is adapted from the corresponding SC in the existing FCLs and MCLs, with additional consideration of applicability for IP telephony service. Among the FMC submissions, Hong Kong Police Force (“HKPF”) considered that the support of emergency call service should be mandated for a unified carrier. HKPF further made a number of suggestions to facilitate the operation of emergency service, including (i) a common and updated database holding all subscriber numbers and addresses that should be made available to HKPF and Fire Services Department (“FSD”) free of charge; and (ii) network and operational enhancements including identification code, call routing, dedicated trunkings, call tracing etc.

44. The TA agrees that emergency call service should be a mandatory obligation of a unified carrier licensee if it provides telephony service using numbers in the Hong Kong Numbering Plan. This obligation has already been specified in the proposed SC 12.1. Under the proposed SC 12.2, the provision of the emergency call service shall be free-of-charge to the public. We welcome the other practical suggestions of HKPF to improve the operation of the emergency call service and these should be implementation issues to be considered by the concerned licensees when they set up the emergency call service and connections with the operational centres of HKPF. The requirement under the proposed SC 12 to support emergency call service is considered sufficient and appropriate.

Question (9) : Do you agree that SC 12 should be maintained for all licensees of unified carriers? What are your views on HKPF’s proposals in paragraph

³² Other than fixed and mobile carriers, the requirement of emergency call service also applies to SBO licensees and MVNO licensees.

Performance Commitments – Withdrawal and Return of Frequencies (SC 21) and Rollout of Network (SC 31)

45. The first FMC consultation paper has discussed the requirement of performance commitments by unified carriers for those parts of their applications relevant to infrastructure rollout³³. To address the concern that operators assigned with limited spectrum resources should be required to make commitments to ensure that they utilize spectrum efficiently, two provisions are made in the UCL. One is the proposed SC 21, which is taken from existing MCLs and has the effect that the TA may withdraw any frequency spectrum previously assigned to the unified licensee if in the opinion of the TA the licensee is not making efficient use of that frequency. The TA is empowered to vary or withdraw any spectrum assigned by reasonable notice under sections 32H(3) and (4) of the Ordinance. According to the Spectrum Policy Framework, the policy inclination is that the said statutory power will be exercised only in exceptional circumstances before the expiry of a spectrum assignment under the Ordinance, including where the public interest so requires. The TA will take guidance from the Spectrum Policy Framework. Another provision is the proposed SC 31 which is also adapted from the existing MCLs and it has the effect of specifying rollout requirements in relation to the use of the frequency spectrum. Among the FMC submissions, there was no objection to the TA's proposal. Considering the industry feedback, no material change is seen necessary for the proposed SC 21 and SC 31 in the UCL.

Question (10): Do you have any further comments on the proposed SC 21 and 31 requiring the efficient use of frequency and compliance with network rollout plan by the unified carrier licensee ?

Universal Service Contribution (“USC”) (SC 22)

46. Shortly after the conclusion of the FMC review, the TA has updated the universal service arrangement in a TA Statement issued on 8 June 2007, and set out the changes in relation to the scope and funding of universal service obligation (“USO”) as well as the calculation and administration of USC. Having regard to the FMC submissions and the latest universal service

³³ See paragraphs 29 – 30 of the first FMC consultation paper.

arrangement set out in the TA Statement of 8 June 2007, the proposed SC 22 has been slightly updated compared with the original version in the first FMC consultation paper in order to clarify the obligation of USC by different licensees.

Question (11): Do you have any comments on the latest form of the proposed SC 22 on USC ?

Insurance (SC 24)

47. This proposed SC is taken from an existing SC in the licences of FNOs entering the market after 2003 and it imposes a requirement for the unified carrier licensee to maintain a valid insurance policy during the licence period. Among the FMC submissions, NWT objected to this requirement and considered that insurance is a commercial issue. We considered that this SC is a reasonable requirement and similar requirement has in fact been applied to all new FNOs licensed after 2000. Therefore, the TA proposes to maintain the SC 24 without change under the UCL.

Question (12): Do you agree that the proposed SC 24 on the maintenance of a valid insurance policy is a reasonable requirement for a unified carrier ?

Use of Public Facilities for Provision of Services (SC 25)

48. At present, individual FC licensees authorized to provide public wireless local area network services covering public streets and unleased Government land may apply to make use of Government facilities as well as facilities on Government property and unleased Government land for provision of such services. For these FC licensees, they are required to comply with any guideline or code of practice which may be issued by the TA for providing practical guidance to the licensees in respect of the use of such public facilities. Similarly, existing MC licensees are eligible to apply to the TA for the installation of base stations on highway facilities or on unleased and unallocated Government land and they are required to follow principles and procedure as set out in a guidance note³⁴ for making such application. Since

³⁴ See the "Guidance Note for Submission of Application for Installing Micro-cell Base Station on Highway Facilities or on Unleased and Unallocated Government Land" (Issue 3, March 2007) issued by the TA. Under the Guidance Note, Micro-cell Base Station ("MCBS") includes mobile telephone base stations for mobile telephone services and Wi-Fi access points and related facilities for public

unified carriers may be authorized to provide wireless fixed or mobile carrier services under its licence, the TA considers that they may make use of public facilities for provision of services subject to a standard obligation for compliance with any relevant guideline or code of practice issued by the TA.

Question (13): Do you have any comment on the proposed SC 31 which shall be complied by a unified carrier making use of public facilities to provide services under its licence ?

Provision of Information to Customers (SC 30)

49. Under the existing SBO Licence and Class Licence for Offer of Telecommunications Services under Section 8(1)(aa) of the Telecommunications Ordinance (“Section 8(1)(aa) Class Licence”), there is a SC requiring the licensee to provide or make available a minimum set of information (including name of licensee, access number, instruction, tariff etc) to customers in offering services to them. The TA considers that this is a reasonable consumer protection requirement to be complied with by all unified carriers and the requirement should be no less than that of the SBO Licence and the Section 8(1)(aa) Class Licence. It is therefore proposed that this SC should be imported as a standard obligation under the UCL.

Question (14): Do you agree that the proposed SC 30 on the provision of information to customers is a reasonable requirement for a unified carrier licensee ?

Disposal of Assets (SC 32)

50. At present, there is a SC in the FCLs which imposes a requirement on the licensee to obtain the prior consent from the TA if the licensee wishes to transfer more than 15% of its asset if the licensee has a dominant position in a telecommunications market or if the licensee has a universal service obligation (“USO”). A similar SC exists in the MCLs³⁵ and it imposes an unconditional requirement on the licensee to obtain the prior consent from the TA if the

wireless local area network services.

³⁵ This SC exists in all the 2G licences, 3G licences and the CDMA2000 licence which will be granted to PCCW-HKT Telephone Ltd. in November 2008.

licensee wishes to transfer more than 10% of its asset. This more stringent requirement imposed on the mobile carriers is derived from the fact that this is one of the licence obligations associated with the spectrum right (paragraph 10 refers). The TA proposes that this SC should be imported into the UCL with a unified threshold of 15% of the net asset value for the relevant asset under the UCL. The two conditions under which this licence obligation previously applied under the FCL will remain unchanged under the UCL irrespective of whether the licensee provides fixed or mobile services. That is to say, the obligation would be applied to a licensee if it has a dominant position in a telecommunications market or it is a universal service provider (“USP”)³⁶. For a licensee who has acquired spectrum rights to provide mobile or wireless carrier services subject to the payment of spectrum utilization fee (“SUF”), the obligation would also be applied even if the prior two conditions are not satisfied.

Question (15): Do you have any comments on the applicability criteria and triggering threshold for the prior consent under the proposed SC 24 on disposal of assets ?

Building Access (SC 33)

51. In the licence conditions of wireline-based FNOs entering the market after 2003, there are some building access related requirements³⁷ to be complied by the concerned FNOs including:

- to forbid entering into agreement or arrangement to prevent or restrict fair, non-discriminatory and orderly access to buildings
- to comply with such guidelines or codes of practice as may be issued by the TA to facilitate and coordinate fair, non-discriminatory and orderly access to buildings³⁸
- to prevent interference to works of others within buildings in the

³⁶ The same applicability criteria will also be applied for the proposed SC 2 on “Purchase of Assets”.

³⁷ The requirements are specified under the licence conditions of “Access to Buildings” and “Limitation on Wiring of Served Premises” in the concerned FCLs. See for example the FCLs of Hong Kong Broadband Network Limited (“HKBN”), Towngas Telecommunications Fixed Network Limited (“Towngas”), SmarTone Services Limited (“SSL”), Hong Kong Cable Television Limited (“HKCTV”), Asia Television Limited (“ATV”) and Television Broadcasts Limited (“TVB”).

³⁸ For example, a “Code of Practice for the Installation and Maintenance of In-building Telecommunications Systems and In-building Access by Telecommunications Network Operators” (“CoP for Building Access”) has been issued by OFTA.

course of installing or maintaining the licensee's network in the concerned buildings

The TA considers that the unified carriers should also follow similar requirements as above and therefore a proposed SC 33 has been added under the sample UCL to govern building access.

Question (16): Do you agree that building access requirements should be specified under the UCL similar to the licence conditions of some existing FC licensees ?

Payment of Spectrum Utilization Fee (SC 34)

52. Under the Spectrum Policy Framework, SUF will be applicable in principle to all non-government use of spectrum. For spectrum with competing commercial demand, an open, competitive bidding or tendering process should be able to determine the appropriate SUF. For spectrum not released through auction or other market mechanisms, the SUF will be set by the Secretary through administrative means under section 32I(2) of the Ordinance to reflect the opportunity costs of the spectrum. Accordingly, the TA proposes to include a standard obligation under SC 34 of the UCL by adaptation of an existing SC in MCLs requiring a unified carrier to pay, where applicable, SUF for all or part of the spectrum assigned to it.

Question (17): Do you have any comments on a standard obligation under the UCL to pay SUF as required under the Ordinance ?

Use of Frequencies in IBCCDS (SC 35)

53. In new FCLs issued after 2003³⁹ which require the use of in-building coaxial cable distribution system ("IBCCDS") for provision of service, a SC has been added to regulate the use of frequency channels within IBCCDS. As IBCCDS should continue to be an important in-building transmission media, the TA proposes that this SC should be imported as a standard obligation under SC 35 of the UCL to allow the shared use of frequency channels in IBCCDS among telecommunications/broadcasting operators without interference to one another.

Question (18): Do you agree that a standard obligation should be added under the UCL to ensure the efficient use of frequencies in IBCCDS ?

Service Contracts and Dispute Resolution (SC 36)

54. In recent years, the overall number of consumer complaints about telecommunications services consistently remains high, as reflected by the Consumer Council's complaint statistics. Such complaints cover a wide range of topics and a significant amount is related to the terms of the service contracts between operators and their customers. When grievances are not resolved by operators effectively and in a timely manner, consumers seek assistance from OFTA and other channels such as the Consumer Council, or Legislative or District Councillors.

55. The adjudication of contractual disputes is currently outside the remit of OFTA. Over the past few years, OFTA has maintained a dialogue with the operators with a view to improving the complaint situation through self-regulatory measures. For example, in 2004, the TA issued two Codes of Practice on Service Contracts recommending basic standards and guiding principles for operators to follow when they prepare their service contracts. The two codes are voluntary in nature, and to date, OFTA has largely relied on operators' self-discipline to implement the codes. Since early this year, OFTA has also been in discussion with the operators about the launching of a pilot programme for setting up a voluntary customer complaint settlement scheme ("CCSS") along the lines of successful schemes in other countries. The CCSS is intended to be an independent and informal mechanism for resolution of disputes between operators and end customers.

56. Overseas experience shows that, in tackling consumer dissatisfaction issues, it is preferable to adopt a coordinated approach to the issues of fairer contract terms and independent complaint handling through an alternative dispute resolution regime. The TA thus proposes to enhance the existing regulatory framework for the possible introduction of measures and initiatives to address the customer complaint issues in a more coordinated manner. Under the proposed SC, the TA has power to issue codes of practice in respect of the requirements to apply in the contracting of telecommunications services to customers, and such requirements include the format and terms and

³⁹ These FNOs include HKCTV, ATV, TVB, HKBN and Towngas

conditions of the service contracts, and the submission of consumer disputes for handling under an independent dispute resolution scheme which may be approved by the TA.

57. Although the proposed SC is intended to provide a more formal framework for the improved handling of contractual disputes, the TA encourages the industry to continue tackling these issues voluntarily. There will be no need for the TA to issue any codes of practice pursuant to this proposed licence condition if a self-regulatory regime driven and supported by the industry is running efficiently and effectively. In this respect, the TA will continue to assist the industry to develop voluntary codes of practice and pursue other industry sponsored initiatives such as the CCSS. In case that any codes of practice should be issued by the TA under this proposed licence condition, the industry will be consulted according to the SC 36.3.

Question (19): Do you agree that the TA should introduce a licence condition in the UCL to enable the issue of codes of practice in respect of customer contracts and dispute resolution issues ? If yes, what is the appropriate scope of the licence condition ?

Question (20): Do you consider that the licence condition should be applicable to all types of carrier licences in general or only to the UCL ?

Other Special Conditions

58. At present, there is a SC on “Unsolicited Advertising” in MCLs and certain FCLs requiring a licensee not to use its service or to prevent the service from being used by any user in transmitting unsolicited advertising messages and to comply with such codes of practice as may be issued by the TA. The SC was proposed to be imported into the UCL in the first FMC consultation paper. In view of the enactment of the Unsolicited Electronic Messages Ordinance (“UEMO”) in May 2007 and its full operation on 22 December 2007, it is considered that the said SC is no longer necessary and therefore it would not be included in the UCL. The TA will also be prepared to remove the SC from the existing licences.

59. The common set of SCs in Annex B is intended to reflect the basic obligations to be complied by all unified carriers. It should be noted that these

basic obligations may need to be updated in accordance with the latest developments of the regulatory regimes. Other than the common set of SCs, there might be other SCs which should be included in a UCL because of the following circumstances:

- specific services provided by an applicant which call for specific obligations;
- specific commitments of an applicant which constitute the relevant considerations of the TA in granting a new UCL to the applicant; or
- obligations in an existing carrier licence which the TA considers that it would be in the public interest to maintain under the UCL. The UCL may be issued for replacement of the existing carrier licence which expires, or for conversion of the existing carrier licence before expiry to UCL.

Question (21): Do you have comments on any other SCs that should be applied for unified carriers ?

INTERCONNECTION REGIME

Carrier-to-Carrier Interconnection

60. In the FMC Statement, the TA has concluded that the present regulatory guidance for fixed-mobile interconnection charge (“FMIC”) in favour of the mobile party’s network pays (“MPNP”) model will be withdrawn subject to a 2-years transition period commencing from 27 April 2007. After the transition period which will end in April 2009, there would be no pre-set regulatory guidance for the interconnection charging arrangements between fixed and mobile carriers. On the other hand, the existing arrangement for fixed-fixed interconnection charge (“FFIC”) will remain unchanged, i.e. the FNOs are free to set FFIC commercially subject to observance of such regulatory guidance given by the TA⁴⁰. The TA has never intervened on mobile-mobile interconnection charge (“MMIC”) which is subject to

⁴⁰ At present, the TA has given regulatory guidance on FFIC based on a symmetric and reciprocal calling party’s network pays (“CPNP”) mechanism as specified in the TA Statement, Interconnection and Related Competition Issues Statement No. 7 (Second Revision) “Carrier-to-Carrier Charging Principles”, 18 March 2002.

commercial agreements among the MNOs⁴¹ ever since the emergence of mobile services. Unified carriers may have different interconnection arrangements depending on the types of services it provide.

61. During the transition period, the existing principles given in the series of statements issued by the TA on “Interconnection and Related Competition Issues” for carrier-to-carrier interconnection as have been revised and updated (collectively “Interconnection Statements”) shall continue to be applicable for a unified carrier depending on the services it provides. A unified carrier providing a fixed service will be treated as a fixed carrier, and a unified carrier providing a mobile service will be treated as a mobile carrier. For FMC service provided under the UCL, the TA will decide on a case-by-case basis whether a FMC service is primarily a fixed or a mobile service should the TA consider it necessary to intervene in interconnection matters between a unified carrier and other carriers.

62. The TA concluded in the FMC Statement that he would withdraw the regulatory guidance on interconnection between a fixed network and a mobile network from the TA Statement No. 7 and he would not replace it with any new guidance unless there are market changes that warrant his re-consideration. Also, the TA has made it clear in the FMC Statement that he will modify the TA Statement No. 7 at the end of the transition period to reflect the withdrawal of the present regulatory guidance for FMIC. The TA will revise and update the Interconnection Statements in due course to reflect the prevailing regulatory regime.

Carrier-to-Service Provider Interconnection

63. The existing statements and determinations made by the TA under Section 36A of the Ordinance in relation to interconnection charges between carriers and service providers, including local access charges, and access charge or origination charge for interconnection necessary for the provision of international call forwarding service, shall continue to be applicable for a unified carrier depending on the services it provides. In other words, a unified carrier providing a fixed service will be entitled to such interconnection charges

⁴¹ The existing commercial arrangements for MMIC among MNOs have been based on the “bill and keep” (“BAK”) model whereby no interconnection charge needs to be settled between the concerned MNOs.

as for a fixed carrier, and a unified carrier providing a mobile service will be entitled to such interconnection charges as for a mobile carrier. For FMC service provided under the UCL, the TA will decide on a case-by-case basis whether a FMC service is primarily a fixed or a mobile service should the TA consider it necessary to intervene in interconnection matters between a unified carrier and service providers.

Question (22): Do you have any comments on the interconnection regime for a unified carrier, including the arrangement during the transition period before the withdrawal of existing regulatory guidance on FMIC ?

GRANTING A UNIFIED CARRIER LICENCE

GENERAL APPROACH

64. According to the Secretary's consultation paper, when the proposed unified licensing framework is in place, UCL will be the common licensing vehicle for all types of fixed, mobile and/or converged telecommunications services. The TA will no longer issue any of the existing fixed and mobile carrier licences to any applicants. Instead, the UCL will be issued for new applications and replacement of the existing carrier licences upon their expiry after the unified licensing framework has been implemented.

65. After the introduction of UCL, all the existing FCLs, FCRLs, MCLs and MCRLs issued will remain valid until such time they have been phased out, i.e. the existing fixed and mobile carrier licences have either expired, replaced by UCLs after expiry of the original carrier licences, or converted to UCLs before expiry of the original carrier licences.

66. According to the Secretary's consultation paper, the period of validity for a UCL will be set depending on different scenarios of granting a UCL. These scenarios include:

- (1) New application for a UCL
- (2) Replacing an existing carrier licence upon its expiry by a UCL
- (3) Conversion of an existing carrier licence to a UCL without change in scope of service
- (4) Conversion of existing carrier licence(s) to a UCL for other cases

67. Subject to the making of regulation under section 7(2) of the Ordinance by the Secretary, the period of validity for a UCL under the above scenarios may be summarised in the following Table 1.

Table 1 – Period of validity for a UCL to be granted under different scenarios

Scenarios	Period of Validity for UCL
New application	15 years
Replacing an existing carrier licence upon its expiry	15 years
Conversion of an existing carrier licence – no change in scope	Same as remaining term of the existing carrier licence
Conversion of existing carrier licence(s) - other cases	15 years

68. The arrangement for granting UCL, including the procedures, criteria and setting of rights and obligations, will depend on whether a UCL is applied for by a new applicant or by an existing carrier licensee. The general approach for processing the application under the four scenarios described in Table 1 is depicted as follows in paragraphs 69 – 81. The specific arrangements for replacement of the four FCLs granted in 1995 upon their expiry and for conversion of the existing MCLs will be discussed in more details in paragraphs 82 – 92.

(1) New Application

69. The TA will publish a set of application guidelines for UCL and specify the information to be provided by an applicant for UCL and the broad licensing criteria to be used for evaluation of application proposal. The proposal should contain full details about the applicant, the proposed types of services to be provided under the UCL, technical details, implementation plans, financial plans and any other relevant information. Subject to satisfying the relevant licensing criteria set by the TA and, where applicable, the availability of scarce resource such as radio spectrum to allow the provision of service, the TA will consider whether to grant a UCL to the applicant.

70. Rights in relation to spectrum, number, road opening and building access (see paragraphs 8 – 17) may be granted to the applicant according to the types of services authorized under the UCL.

71. Licence obligations for a new applicant of UCL should include :
- (a) the GCs of UCL;
 - (b) the common set of SCs as given in Annex B; and
 - (c) any other SCs which may be prescribed by the TA according to the application proposal of the applicant.

(2) Replacing an existing carrier licence upon its expiry

72. The detailed arrangement for replacement of an existing carrier licence upon expiry with a UCL will depend on the individual case. In general, the licensee should submit an application to the TA for continuing to operate the service specified under the scope of the original licence, in association with any new services which the licensee would like to operate under the new unified licence. Basically, the TA will examine the application according to the similar criteria as for granting a UCL to a new applicant. In granting the UCL, apart from the common rights and obligations as are applicable to a new applicant, the TA will also need to consider if the rights and obligations under the existing carrier licence should or should not be maintained in the UCL to be granted.

73. While new rights may be granted by the TA for new services to be provided under the new UCL, rights under the original carrier licence will not by default be carried over to the new licence. In particular, according to the Spectrum Policy Framework, there is no legitimate expectation that there will be any right of renewal or right of first refusal of any licence or spectrum assignment upon the expiry of a licence of spectrum assignment under the Ordinance. The TA will take guidance from the Spectrum Policy Framework in deciding whether to assign the same or varied radio frequencies under the new licence.

74. Existing obligations under the existing licence may also be maintained in the new licence if they are still considered relevant under the new licence. For example, the FCLs of certain broadcasters⁴² contain special licence obligations which are related to the transmission and distribution of broadcasting signals (e.g. combined transmitting systems, standby equipment

⁴² The broadcasters holding FCLs include Asia Television Limited (“ATV”), Television Broadcasts Limited (“TVB”) and Hong Kong Cable Television Limited (“HKCTV”).

and spare parts). These special obligations will be maintained in the UCL to be granted to replace the FCL upon its expiry if the TA is satisfied that such obligations are still applicable. In summary, the licence obligations under a UCL to be granted for replacement of an existing carrier licence should include :

- (a) the GCs of UCL;
- (b) the common set of SCs as given in Annex B;
- (c) any SCs in the existing carrier licence which should be maintained in the UCL; and
- (d) any other SCs which may be prescribed by the TA according to the application proposal of the applicant.

(3) Conversion – without change in scope

75. The detailed arrangement for conversion of an existing carrier licence (before its expiry) to UCL will depend on the individual case. In general, the licensee should submit an application to the TA for a UCL to operate the same service authorized under the original licence. If a UCL is to be granted by the TA under such situation, apart from the common rights and obligations as are applicable to a new applicant, the licensee will in principle inherit all legacy rights and obligations under the existing carrier licence when it is granted the new licence.

76. Legacy rights in relation to spectrum, numbers, road opening and building access etc will basically be transplanted to the UCL to be granted for the conversion purpose. Nevertheless, it should be noted that since the validity period of the UCL is the same as the remaining term of the original carrier licence (see paragraph 67), the applicability of legacy rights will not extend beyond the validity period of the UCL (which is the same as the remaining term of the original carrier licence in this case). In particular, the right to use spectrum assigned under the original licence will be transferred to the UCL to such extent as is applicable under the original licence. The granting of UCL shall not operate to extend the assignment period for the spectrum under the original licence.

77. Similarly, legacy obligations in the original carrier licence will be transferred to the new unified licence. For example, under the MCLs for the existing 2G and third generation (“3G”) mobile services, there are certain

special obligations imposed on the licensees at the time they acquired the right to use spectrum through bidding in auction or via an administrative process (e.g. compliance with auction rules, open network access). These special obligations should continue to apply under the UCL to be granted for conversion of the MCLs. If the legacy obligations conflict with the common obligations under the proposed common SCs in Annex B and the former should be more appropriate under the new licence, the legacy obligations should take precedence in general. In summary, the licence obligations under a UCL to be granted for conversion of an existing carrier licence with no change in scope of service should include:

- (a) the GCs of UCL;
- (b) the common set of SCs as given in Annex B except where the legacy obligations should take precedence; and
- (c) any SCs in the existing carrier licence which should be transplanted to the UCL. If these SCs conflict with the common set of SCs in paragraph (b) above and the policy intention is such that these special obligations should be maintained under the UCL, the SCs in this paragraph (c) will in general take precedence.

(4) Conversion – other cases

78. The granting of a UCL to convert or replace one or more existing carrier licence(s) under different situations, other than a simple conversion without change in scope of service, will be handled by the TA on a case-by-case basis. Since a UCL with a full validity period of 15 years will be granted in this scenario (see paragraph 67), the holder of the existing carrier licence(s) should submit an application proposal including full details as required for a new application. In granting the UCL, apart from the common rights and obligations for a unified carrier, the TA will also need to consider if it is appropriate to transfer the legacy rights and obligations under the existing carrier licence(s) to the UCL.

79. Similar to the scenario of “Replacing an existing carrier licence upon its expiry” described above, while new rights may be granted by the TA for new services to be provided under the new UCL, legacy rights under the original carrier licence will not by default be carried over to the new licence. The only exception is the right to use spectrum assigned under the existing

carrier licence(s). If there are rights to use different bands of spectrum assigned under the original licence(s), these spectrum rights may continue to apply under the UCL but these transferred rights shall not extend beyond the remaining period of the original licence(s).

80. The legacy obligations applicable under the original licence(s) may also be carried over to the new unified licence if they are considered to be relevant during the validity period of the UCL. In particular, if spectrum rights under the original licences should be transferred to the UCL according to the above paragraph, obligations associated with the rights to use spectrum shall apply under the UCL during the remaining terms of the spectrum assignments. Same as the approach described in paragraph 77 for the scenario of “Conversion – without change in scope”, if such legacy obligations should conflict with the common obligations under the proposed common SCs in Annex B and the former should be more appropriate under the new licence, then the legacy obligations should take precedence in general. In summary, the licence obligations under a UCL to be granted for conversion of existing carrier licence(s) for cases other than simple conversion without change in scope of service should include :

- (a) the GCs of UCL;
- (b) the common set of SCs as given in Annex B except where the legacy obligations should take precedence;
- (c) any SCs in the existing carrier licence(s) which should be transplanted to the UCL. If these SCs conflict with the common set of SCs in paragraph (b) above and the policy intention is such that these special obligations should be maintained under the UCL, the SCs in this paragraph (c) will in general take precedence; and
- (d) any other SCs which may be prescribed by the TA according to the application proposal of the applicant.

Summary of Different Scenarios

81. The approach for granting a UCL and the setting of rights and obligations under the UCL for the above four scenarios can be summarised by the following table:

Table 2 – Rights and Obligations under UCL for Different Scenarios

Scenarios of granting UCL	Rights and Obligations under UCL			
	Existing rights (under existing licence)	Existing obligations (under existing licence)	New rights (under UCL)	New obligations (under UCL)
New applications	Not applicable	Not applicable	Yes	Yes
Replacing an existing carrier licence upon its expiry	Not applicable	Not applicable	Yes	Yes (Note 1)
Conversion of an existing carrier licence – no change in scope	Yes	Yes	Not applicable (Note 2)	Yes (Note 3)
Conversion of existing carrier licence(s) - other cases	Not applicable (Note 4)	To be processed on a case by case basis (Note 5)	Yes	Yes (Note 3)

Note 1: Obligations under the existing licence may also be maintained in the new licence if they are still considered relevant under the UCL. (see paragraph 74).

Note 2: With no change in scope of service from the original carrier licence, any new rights which may be granted under the UCL will only be considered on a case by case basis.

Note 3: If there is any conflict between the legacy obligations due to rights to use spectrum and the common obligations under the UCL, the legacy obligations shall take precedence in general (see paragraphs 77 and 80).

Note 4: With the exception of spectrum rights which may be transferred to the UCL and applied during the remaining terms of the original spectrum assignments (see paragraph 79).

Note 5: Legacy obligations under the existing licence which are still relevant for the license will be transferred to the UCL (see paragraph 80).

Question (23): Do you have any comments on the general approach of granting UCLs under different scenarios as depicted in paragraphs 69 – 81 ?

REPLACEMENT OF THE FOUR FIXED CARRIER LICENCES ISSUED IN 1995

82. The four FCLs of PCCW-HKT Telephone Limited⁴³ (“PCCW”), Hutchison Global Communications Limited (“HGC”), New World Telecommunications Limited (“NWT”) and Wharf T&T Limited (“WT&T”) (hereafter referred to as “the 1995 FC licensees”) will expire in June 2010⁴⁴.

⁴³ The FTNS licence of PCCW was replaced by a FCL on 14 January 2005 with the same expiry date as the original FTNS licence.

⁴⁴ PCCW’s licence will expire on 28 June 2010, HGC’s on 29 June 2010, NWT’s on 19 June 2010 and WT&T’s on 26 June 2010. Apart from these four licences, the FCL of Reach Networks Hong Kong Limited, Reach Cable Networks Limited and Reach Global Services Limited (collectively referred to as

According to the present Regulation, these licences may be renewed for a further period not exceeding 15 years as specified by the TA, in the case of a renewal (if any) of the licences. According to the proposal in the Secretary's consultation paper, to facilitate migration to the unified licensing regime, the TA will not renew these four FCLs under the fixed carrier licensing regime but will instead be prepared to grant new licences under the unified licensing regime to replace the four FCLs when they expire.

83. Basically, the replacement of the four FCLs will be handled under the scenario of "Replacing an existing carrier licence upon its expiry" as depicted in paragraphs 72 – 74. While the four licensees may apply for early conversion of their FCLs to UCLs before their existing licences expire, it is reckoned that by the time when the UCL is available the remaining period of the existing licences will be less than 2 years. The TA expects that the chance for him to receive such an application will be rather remote. Nonetheless, if he does receive such an application, it will be handled under the scenario of "Conversion without change in scope" as depicted in paragraphs 75 – 77. Alternatively, individual licensee holder may wish to apply for a UCL to encompass the services under its existing FCL and other carrier licence(s) that it is currently holding. In this case, the TA will handle the application under the scenario of "Conversion – other cases" as depicted under paragraphs 78 – 80. For the sake of simplicity, the arrangement for handling applications from the 1995 FC licensees to replace their existing licences will be described in the following paragraphs 84 – 89.

Rights under the UCL

84. Assuming that the four 1995 FC licensees will submit applications to the TA for continuing to operate the fixed services authorized under their existing licences upon expiry of the licences, the applications will be processed in accordance with paragraph 72. The TA will need to consider if rights under the existing licences should or should not be carried over to the UCLs. More specifically, the granting of the four kinds of rights in relation to use of radio spectrum, numbers, road opening and building access is proposed as follows:

- (a) All existing spectrum assignments under the existing licences of the

"Reach") will also expire on 28 June 2010. The arrangement for replacement of Reach's licence will not be discussed in detail here, but will be handled according to the general approach described in this consultation paper.

four 1995 FC licensees will be carried over to the new unified licences, subject to review by OFTA on any alternative use of the frequencies and the need of variation / withdrawal for the assignments. For new spectrum assignments, the four licensees should be required to apply for administrative based assignment (where there is no competing demand for the frequency bands) or to bid for the spectrum in an open, competitive bidding / tendering process (where there is competing demand for the frequency bands), just like any other carrier licensees today.

- (b) All existing numbers and codes under the Hong Kong Numbering Plan allocated to the four 1995 FC licensees will continue to be allocated to the respective licensees if they are granted with UCLs. For new numbers and codes, the four licensees should be required to make applications for allocation by the TA in the same manner as any other carrier licensees today.
- (c) The four 1995 FC licensees will continue to be entitled to road opening, but the authorization will be granted on a case-by-case basis same as new carriers authorized to provide public wireline-based services today. In other words, upon replacement of the FCL by UCL, each of the four licensees should be required to submit a master plan for the TA's approval and the master plan will be updated if there are any changes in the future.
- (d) In June 1995, the TA issued a blanket authorization to allow the four 1995 FC licensees to place and maintain telecommunications lines in the common parts of buildings⁴⁵. On the other hand, other fixed carriers are granted with authorization on a case-by-case basis. Under the UCL, authorization for building access under section 14(1) of the Ordinance will be granted to the four licensees on a case-by-case basis for new buildings to be covered by the licensees.

85. Currently, the four 1995 FC licensees are directed to facilitate both ONP and MNP. While they should facilitate ONP at their own expenses, they

⁴⁵ The current practice of PCCW, WTT, NWT and HGC is that they, from time to time, request the TA to grant authorization under Section 14(1) to them for access to individual buildings where there are problems encountered, even though blanket authorization was given to them.

may levy relevant MNP charges on MNOs. Other FNOs need to facilitate both ONP and MNP at their own expenses under their licences. Under the UCL, a unified carrier should have the obligation to facilitate ONP and MNP at its own expenses. When the four licensees have their existing FCLs replaced by UCLs, they will have the same obligation as a new licensee today and the right to levy MNP charges on MNOs or other unified carriers that provide public radiocommunications services would no longer be applicable under their new licences.

Obligations under the UCL

HGC, WT&T and NWT

86. Upon conversion to UCL, the four 1995 FC licensees will be subject to the common obligations under the UCL. The TA has conducted a preliminary review and he is of the view that there are no special obligations in the existing FTNS licences of HGC, NWT and WTT that need to be maintained in the UCLs which are to be granted for replacement of their FTNS licences. In certain cases, the existing obligations will be replaced by the common obligations under the UCL. For example, the *ex ante* tariff regulatory regime under the FTNS licences of HGC, WT&T and NWT⁴⁶ will be replaced by the *ex post* tariff regulatory regime.

PCCW

87. Under Section 35B of the Ordinance, the TA may require one or more FC licensee to have a USO. At present, PCCW is the only universal service provider (“USP”) appointed by the TA and its existing FCL has a unique SC 1 in relation to its USO. When the current FCL of PCCW expires on 28 June 2010, the TA intends to require PCCW to continue to have a USO under its replacement licence which will be granted on 29 June 2010. To give effect to this requirement, SC 1 under the existing FCL of PCCW will be subsumed under SC 22 in its replacement UCL. In future, any unified carrier that may be appointed as an USP will also have a similar SC 22 which will be based on a form as set out in Annex D of this consultation paper.

⁴⁶ In actual circumstances, certain *ex ante* tariff regulatory requirements under the licences of the three FTNS licensees were waived by the TA when the licences were granted in 1995.

88. There is also a SC 3.4 in the existing FCL of PCCW which requires that any amendment to the published interconnection tariffs⁴⁷ of PCCW, which was in force since 1 Dec 2004, must first be approved by the TA in writing. This SC 3.4 was specifically added in the *ex post* FCL granted to PCCW in January 2005 in order to preserve the *status quo* for the *ex ante* tariff approval requirement for interconnection services provided by PCCW then in existence⁴⁸. In applying the *ex post* tariff regulation, PCCW is required to comply with notification requirement under SC 8 of its FCL which has to be read together with Schedule 6 to its licence. Furthermore, there is a special obligation under SC 25 in PCCW's FCL to govern the use of payphone kiosks for provision of public wireless local area network services. On preliminary review, the TA considers that all the aforementioned obligations under PCCW's existing FCL would still be applicable for fixed services provided by PCCW in the foreseeable future. Therefore, the obligations that should be maintained in the UCL for replacement of PCCW's FCL should include the SC 3.4 and SC 25 (in addition to SC 1 on USO discussed in the last paragraph) in the existing FCL. In granting the UCL, relevant updates will be made to the concerned SCs in order to reflect the latest regulatory regimes.

89. In the submissions to the two FMC consultations, PCCW commented that there is no reason why the obligation under SC 3.4 of its FCL should be carried over to the new UCL. However, the obligation under SC3.4 was specifically incorporated in the licence of PCCW in January 2005 because there was a perceived need at the time when the TA introduced the *ex post* regime. As the *ex post* regime has only been in place for three years, the TA does not see any justification at this juncture for any change in this aspect.

Question (24): Do you have any comments on the proposed arrangement of replacement of the four FCLs issued in 1995, in particular on the preservation of existing rights and obligations under the new UCLs proposed to be granted for replacement of the licences ?

⁴⁷ The interconnection tariffs include those for interconnection between fixed and mobile services, interconnection between fixed and value added services, broadband copper local loop and exchange co-location services, IP-VPN services (MegaLink access and MegaLink VPN), residential cell relay services.

⁴⁸ For details, please see the Statement on "Implementation of *ex post* Regulation of the Tariffs of PCCW-HKT Telephone Limited under a New Fixed Carrier Licence" issued by the TA on 13 January 2005.

CONVERSION OF EXISTING MOBILE CARRIER LICENCES

90. There are four MCLs granted in October 2001 for the provision of 3G mobile service, three MCLs granted in end 2005/early 2006 for renewal of the previous Public Radiocommunications Service (“PRS”) licences providing 2G mobile service based on the GSM 900 standard, and six MCLs granted in September 2006 for renewal of the previous PRS licences providing 2G mobile service based on the GSM 1800 standard. In addition, one MCL will be granted by the TA to the successful bidder of spectrum in the 850 MHz for providing 3G mobile service based on the CDMA2000 standard. Under the present Regulation, the renewal arrangement for MCL has not been specified. According to the proposal in the Secretary’s consultation paper, upon the expiry of these 2G / 3G MCLs, if the concerned licensees should be authorized to continue providing their services subject to the renewal of the spectrum assignments for providing the mobile services, the MCLs would be replaced by UCLs. These licensees may also apply for conversion of their existing MCLs to UCLs but this will be entirely on a voluntary basis.

91. Basically, the conversion of the MCLs will be handled under the scenario of “Conversion without change in scope” as depicted in paragraphs 75 – 77. Alternatively, an individual MCL holder may wish to apply for a UCL to encompass the services under its existing MCL and other carrier licence(s) it is currently holding. In the latter case, the TA will handle it under the scenario of “Conversion – other cases” as depicted under paragraphs 78 – 80. For the sake of simplicity, the arrangement for handling application from a MC licensee to convert its existing licence into UCL without change in scope of service would be described in the following paragraphs 92 – 94.

Rights under the UCL

92. Rights under the original MCL will basically be transferred to the UCL for conversion of the MCL as follows:

- (a) All existing spectrum assignments under the original MCL will be carried over to the new unified licence, with the same remaining periods of validity for the assignments. For new spectrum assignments, the licensee should be required to bid for the spectrum

in an open, competitive bidding / tendering process or to apply for administrative based assignment, depending on whether the requested spectrum has competing commercial demand or not.

- (b) All existing numbers and codes under the Hong Kong Numbering Plan allocated to the MC licensee will continue to be allocated to the licensee if it is granted with a UCL. For new numbers and codes, the licensee should be required to make application for allocation by the TA in the same manner as any carrier licensees today.
- (c) Same as the existing practice, right of road opening will not be granted to the licensee if it provides mobile services only under the UCL.
- (d) Same as existing practice, right of building access under Section 14(1) of the Ordinance will not be granted to the licensee if it provides mobile services only under the UCL.

93. Currently, MNOs are required to facilitate MNP only, but not ONP. Since they do not establish and maintain ONP database, they need to access ONP database through a FNO in order to route calls directly and more efficiently to the destination FNOs. Under the unified licensing regime, all unified carriers are required to facilitate MNP, ONP and FMNP (if it is introduced in the future). In the FMC Statement, the TA concluded that all carriers should have equal right of access to all number porting data (including both fixed and mobile numbers). This unified right of access to number porting data will be assured under the UCL.

Obligations under the UCL

94. Upon conversion to UCL, a MC licensee will be subject to the common obligations under the UCL. As a result, the *ex ante* tariff regulation under the existing MCL⁴⁹ will be replaced by the *ex post* tariff regulatory regime. Under the proposed tariff publication requirement under the UCL (see paragraph 31), a 3G MC licensee will no longer be required to publish

⁴⁹ In actual circumstances, those *ex ante* tariff regulatory requirements under the MCLs have never been applied by the TA.

their tariffs in the newspapers upon conversion of the MCL to UCL. On the other hand, some legacy obligations in relation to the use of spectrum for the provision of mobile services under the original MCL should be transplanted to the UCL. The relevant SCs reflecting these legacy obligations would be imported into the new licence and they should take precedence in general where there is conflict with the common obligations under the UCL (see paragraph 77). On preliminary review, the SCs to be transplanted should include:

- (a) Payment of Spectrum Utilization Fees (*SC 2 in all MCLs*)⁵⁰
- (b) Performance Bond (*SC 3 in 3G / CDMA2000 MCLs*)
- (c) Disposal of Assets (*SC 4 in all MCLs*)⁵¹
- (d) Accounting Practices (*SC 7 in all MCLs*)⁵²
- (e) Open Network Access (*SC 12 in 3G/2G MC licences*)
- (f) Anti-Avoidance Provisions (*SC 13 in 3G/2G MCLs*)
- (g) Compliance with Auction Rules (*SC 20 in 3G MCLs and SC 19 in CDMA2000 MCL*)
- (h) Ownership and Control of the Licensee (*SC 21 in 3G MCLs*)

Question (25): Do you have any comments on the proposed arrangement of conversion of the existing MCLs, in particular on the transplanting of legacy rights and obligations to the new UCLs proposed to be granted for conversion of the licences ?

NEXT STEPS

95. Subject to the enactment of the necessary legislation on creation of the UCL and taking into account the feedback from the industry to this consultation, the following steps will be taken by the TA for implementation of the unified carrier licensing regime:

- (a) to issue a statement setting out the finalised licensing framework

⁵⁰ This SC on “Payment of Spectrum Utilization Fees” in the existing MCLs conflicts with the proposed SC 34 under the UCL and in this case the legacy obligation shall take precedence.

⁵¹ This SC on “Disposal of Assets” in the existing MCLs conflicts with the proposed SC 32 under the UCL and in this case the legacy obligation shall take precedence.

⁵² This SC on “Accounting Practices” in the existing MCLs for 2G and 3G mobile services conflicts with the proposed SC 5 under the UCL and in this case the legacy obligation shall take precedence.

- for UCL;
- (b) to publish a set of application guidelines for UCL;
 - (c) to invite the four 1995 FC licensees to apply for UCLs for replacement of their existing licences which will expire in 2010; and
 - (d) to invite the existing MCLs and other FCLs to apply for conversion of their licences to UCLs.

INVITATION FOR COMMENTS

96. The TA would like to solicit views from the industry and other interested parties on the proposals set out in this consultation paper. Views and comments should reach the TA, preferably in electronic form, on or before 20 February 2008.

97. Any person who submits views and comments should also give the supporting information or justifications and should note that the TA will publish all or part of the submission received and disclose the identity of the source in such manner as the TA sees fit. Any parts of the submission, which are considered confidential by the respondents, should be clearly marked together with the reasons for such claim. The TA will take such markings into account in making his decision as to whether to disclose such information or not. Submissions should be addressed to:

Office of the Telecommunications Authority
29/F Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong
[Attention: Senior Telecommunications Engineer (R13)]

Comments may also be sent by fax to 2803 5112 or by email to ucl@ofta.gov.hk

Office of the Telecommunications Authority

21 December 2007

ANNEX A

Scope of Service Covered by the Unified Carrier Licence

Types of service	Existing carrier licence	Description under existing carrier licence ⁵³	Description under UCL
Wireline-based FTNS	Fixed Carrier	all internal (and external) telecommunication services between fixed points capable of being provided utilising the Network, other than telecommunication services the subject of an exclusive licence issued under the Ordinance, a licence deemed to be granted under the Ordinance, a Mobile Carrier Licence, a Public Radiocommunications Service Licence, a Radio Paging System Licence, a service subject to licensing under any other Ordinance, or a satellite broadcasting service under a Satellite Television Uplink and Downlink Licence.	Basically no change but will be updated to remove reference to obsolete licences
Local wireless FTNS	Fixed Carrier	Basically same as above	Same as above
FTNS for Distribution of Domestic Free TV Programme Service	Fixed Carrier	<p>1. all internal telecommunications services between fixed points capable of being provided utilising the network as defined in Schedule 2 and the Radiocommunications Installations as defined in Parts (A) and (B) of Schedule 3 (other than telecommunications services the subject of an exclusive licence issued under the Ordinance, a public radiocommunications service licence, a mobile carrier licence, a radio paging system licence or a service subject to licensing under any other Ordinance), including :</p> <p>(i) transmission of television and associated sound and data signals for the distribution of the television programme service licensed under the domestic free television programme service licence(s)</p>	To be the same as wireline-based FTNS

⁵³ The concerned descriptions are same as those incorporated in the existing carrier licences

Types of service	Existing carrier licence	Description under existing carrier licence ⁵³	Description under UCL
		<p>held by the licensee;</p> <p>(ii) operation of Radiocommunications Installations as defined in Parts (A) and (B) of Schedule 3 for the transmission and reception of television and associated sound and data signals related to the provision of the service referred to in paragraph (i); and</p> <p>(iii) provision of telecommunications services to the public as approved by the Authority.</p> <p>2. all external telecommunications services between fixed points capable of being provided utilising the Radiocommunications Installations as defined in Parts (B) and (C) of Schedule 3 for carriage of, in the case of –</p> <p>(i) Outgoing messages from Hong Kong, messages that originate from the licensee or, where the licensee is a company, from the licensee’s holding company, a subsidiary of the licensee or any affiliated company; and</p> <p>(ii) incoming messages to Hong Kong, messages that are intended for the licensee or, where the licensee is a company, for the licensee’s holding company, a subsidiary of the licensee or any affiliated company.</p>	
Satellite-based external FTNS	Fixed Carrier	all external telecommunications services between fixed points capable of being provided utilising the network, other than telecommunications services the subject of an exclusive licence issued under the Ordinance, a deemed licence, a public radiocommunications service licence, a mobile carrier licence, a radio paging system licence, a service subject to licensing under any other Ordinance, a fixed carrier (restricted) licence, or a satellite broadcasting service under a satellite television uplink and downlink	Basically no change but will be updated to remove reference to obsolete licences

Types of service	Existing carrier licence	Description under existing carrier licence ⁵³	Description under UCL
		<p>licence.</p> <p>The licensee may establish and maintain an external telecommunications circuit based on a non-cable based external network at the Hong Kong end.</p>	
Cable-based external FTNS	Fixed Carrier	Similar to the satellite-based external FTNS except that the licensee may establish and maintain an external telecommunications circuit based on a cable based external network or non-cable based external network at the Hong Kong end.	Basically no change but will be updated to remove reference to obsolete licences
FTNS for carrying television programmes	Fixed Carrier (Restricted)	<p>To establish and operate –</p> <p>(a) a transmission network to transmit television and associated sound and data signals for the distribution of the television programme service licensed under the television programme service licence held by the licensee under the Broadcasting Ordinance; and</p> <p>(b) ancillary telecommunications facilities for the operation of broadcasting services and the transmission and reception of television and associated sound and data signals related to the provision of the service.</p>	Same as local FTNS
Mobile Services	Mobile Carrier	A public mobile radiocommunications service using cellular radiocommunications technology operating at frequencies specified in Schedule 3 within the [frequency range to be specified] frequency band to enable two-way communications between moving locations or between a moving location and a fixed location;	No change
Mobile services other than land mobile services	Mobile Carrier (Restricted)	<p>Public radiocommunications service including:</p> <p>(a) maritime mobile service, which means a mobile radiocommunications service between the coast stations operated</p>	No change

Types of service	Existing carrier licence	Description under existing carrier licence ⁵³	Description under UCL
		<p>by the licensee in the territory of HKSAR and customers' ship stations (regardless of whether the ship stations are within HKSAR waters or outside the territory of the HKSAR), or between customers' ship station (regardless of whether the ship stations are within HKSAR waters or outside the territory of HKSAR) routed in transit via the coast stations operated by the licensee in the territory of HKSAR</p> <p>(b) maritime mobile-satellite service, which means a mobile radiocommunications service via satellite between the coast earth stations operated by the licensee in the territory of HKSAR and customers' ship earth stations (regardless of whether the ship earth stations are within HKSAR waters or outside the territory of HKSAR), or between customers' ship earth stations (regardless of whether the ship earth stations are within HKSAR waters or outside the territory of HKSAR) routed in transit via the coast earth stations operated by the licensee in the territory of HKSAR</p> <p>(c) aeronautical mobile service, which means a mobile radiocommunications service between the aeronautical stations operated by the licensee in the territory of HKSAR and customers' aircraft stations (regardless of whether the aircraft stations are located within the territory of HKSAR or outside the territory of HKSAR), or between customers' aircraft stations (regardless of whether the aircraft stations are located within the territory of HKSAR or outside the territory of HKSAR) routed in transit via the aeronautical stations operated by the</p>	

Types of service	Existing carrier licence	Description under existing carrier licence ⁵³	Description under UCL
		<p>licensee in the territory of HKSAR.</p> <p>(d) aeronautical mobile-satellite service, which means a mobile radiocommunications service via satellite between the aeronautical earth stations operated by the licensee in the territory of HKSAR and customers' aircraft earth stations (regardless of whether the aircraft earth stations are located within the territory of HKSAR or outside the territory of the HKSAR), or between customers' aircraft earth stations (regardless of whether the aircraft earth stations are located within the territory of HKSAR or outside the territory of HKSAR) routed in transit via the aeronautical earth stations operated by the licensee in the territory of HKSAR</p> <p>(e) Land mobile-satellite service, which means a mobile radiocommunications service via satellite between the gateway earth stations operated by the licensee in the territory of HKSAR and customers' land mobile earth stations (regardless of whether the land mobile earth stations are located within the territory of HKSAR or outside the territory of HKSAR), or between customers' land mobile earth stations (regardless whether the land mobile earth stations are located within the territory of HKSAR or outside the territory of HKSAR) routed in transit via the gateway earth stations operated by the licensee in the territory of HKSAR</p>	

Sample UCL

**TELECOMMUNICATIONS ORDINANCE
(Chapter 106)**

UNIFIED CARRIER LICENCE

DATE OF ISSUE: []

[Company Name]

.....

of [Address]

.....

(the “licensee”) is licensed, subject to the following conditions set out in this licence-

- (a) to provide a public telecommunications network service (the “service”), the scope of which is described in Schedule 1;
- (b) to establish and maintain a telecommunications network (the “network”) described in Schedule 2 to provide the service;
- (c) to possess and use the radiocommunications installations described in Schedule 3 to provide the service; and
- (d) to deal in, import and demonstrate, with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the service.

PROPOSED GENERAL CONDITIONS

[Please refer to the “Consultation Paper on the Creation of A Unified Carrier Licence under the Telecommunications Ordinance” published by the Secretary for Commerce and Economic Development on 21 December 2007. The paper may be downloaded from the website of Commerce and Economic Development Bureau (www.cedb.gov.hk/ctb).]

PROPOSED SPECIAL CONDITIONS

1. COMPLIANCE WITH CODES OF PRACTICE

1.1. The licensee shall comply with such guidelines or codes of practices which may be issued by the Authority as in his opinion are suitable for the purpose of providing practical guidance on any particular aspect of any conditions of this licence.

1.2 Without limiting or affecting in any way the licensee's obligations under any other Condition, the licensee shall comply with any code of practice or guideline which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of:

- (a) the provision of satisfactory service;
- (b) the protection of customer information;
- (c) the protection and promotion of the interests of consumers of telecommunications goods and services; and
- (d) calling line identification and other calling line identification related services.

1.3 Before issuing any code of practice or guideline referred to in Special Condition 1.2, the Authority shall carry out such consultation as is reasonable in all the circumstances of the case.

1.4 Without limiting the generality of Special Condition 1.2(d), the code or practice or guideline issued under that Special Condition may require the licensee to validate the calling line identification against the authenticated customer in order to prevent fraud and spam.

2. PURCHASE OF ASSETS

2.1 If a licensee is (1) in a dominant position in the relevant

telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation specified under the Ordinance, the Government may elect to take over the licensee's undertaking and purchase all or part of its assets if any of the following circumstances occur –

- (i) this licence expires;
- (ii) this licence is revoked;
- (iii) the licensee goes into liquidation; or
- (iv) the licensee ceases to carry on business,

provided that if the Government elects to do so, it shall give notice in writing not later than 90 days in advance of the expiry of this licence, or immediately upon revocation of this licence or within a reasonable time of the happening of the events at Special Condition 2.1(iii) or 2.1(iv).

2.2 The selling price shall be agreed between the Government and the licensee on the basis of the fair market value of those assets at the time of acquisition determined on the basis that this licence remains in force and that the network is continuing to be used for the provision of the service. If no agreement can be reached between the Government and the licensee, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).

2.3 For the purpose of Special Condition 2.1,

- (1) where the licensee is in a dominant position in the relevant telecommunications market, the undertaking and assets of the licensee shall be the relevant undertaking and assets of the licensee in relation to its dominant position in that relevant telecommunications market;
- (2) where the licensee is subject to a universal service obligation, the undertaking and assets of the licensee shall be the relevant undertaking and assets of the licensee in relation to its operation that is subject to the universal service obligation.

3. REQUIREMENTS FOR INTERCONNECTION

- 3.1 The licensee shall interconnect its service and network with the services and networks of other unified carriers, mobile carriers, fixed carriers or fixed telecommunications network services operators licensed under the Ordinance and, where directed by the Authority, interconnect its service and network with telecommunications networks and services of a type mentioned in section 36A(3D) of the Ordinance. The licensee shall interconnect its service and network with the services and networks of other interconnecting parties under this Special Condition to ensure any-to-any connectivity, i.e. any customer in any one network can have access to any other customer in any interconnecting network and, where directed by the Authority, to any service offered in any interconnecting network.
- 3.2 The licensee shall use all reasonable endeavours to ensure that interconnection is effected promptly, efficiently and on terms, conditions and at charges which are based on the licensee's reasonable relevant costs attributable to interconnection.
- 3.3 The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of the service and the network with the telecommunications networks or services of the other entities referred to in Special Conditions 3.1. Such facilities and services include –
- (a) carriage services for the delivery of codes, messages or signals or other communication across and between the interconnected networks;
 - (b) those necessary to establish, operate and maintain points of interconnection between the licensee's network and the networks of the other entities, including, without limitation, the provision of sufficient transmission capacity to connect between the licensee's network and networks of the other entities;

- (c) billing information reasonably required to enable the other entities to bill their customers;
- (d) facilities specified by the Authority pursuant to section 36AA of the Ordinance; and
- (e) ancillary facilities and services required to support the above types of interconnection facilities and services.

4. NUMBERING PLAN AND NUMBER PORTABILITY

- 4.1 The licensee shall comply with the numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.
- 4.2 The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.
- 4.3 Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the service.
- 4.4 The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any unified carrier licensee, fixed carrier or fixed telecommunications network service licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be, so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other unified carrier licensee, fixed carrier or fixed telecommunications network service licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be.
- 4.5 Directions by the Authority under Special Condition 4.4 include reasonable directions concerning,

- (a) compliance with Special Condition 4.4 by the licensee at the licensee's own expenses, or by equitably sharing all relevant costs associated with providing portability of numbers as between the licensee, any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be; and
- (b) facilitation of portability of numbers through such technical arrangement (including but not restricted to a centralized database) as may be specified by the Authority, in co-operation with other parties sharing or maintaining the technical arrangement at such costs as may be directed under Special Condition 4.5(a).

4.6 For the purposes of this Special Condition, "portability of numbers" means the function of the network and the service which enables a customer of the service of a unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator or mobile virtual network operator to become a customer of another unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator or mobile virtual network operator or any other licensee, as the case may be, without changing the number assigned to that customer.

5. ACCOUNTING PRACTICES

5.1 Where directed by the Authority in writing, the licensee shall implement such accounting practices as specified by the Authority. Such accounting practices are to be consistent with generally accepted accounting practices, where applicable, and may include (but are not limited to) accounting practices which allow for the identification of the costs and charges for different services or types or kinds of services.

6. REQUIREMENT TO FURNISH INFORMATION TO THE

AUTHORITY

- 6.1 The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information relating to the business run by the licensee under this licence, including financial, technical, and statistical information, accounts and other records, as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence. Information referred to in this condition includes but is not limited to such information as is listed in Schedule 4.
- 6.2 Subject to Special Condition 6.3 the Authority may use and disclose information to such persons as the Authority thinks fit.
- 6.3 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

7. TARIFFS

- 7.1 The licensee shall publish and charge no more than the tariffs for the service operated under this licence. The tariffs shall include the terms, as defined under section 7F(2) of the Ordinance, for the provision of the service.
- 7.2 Publication of a tariff shall be effected by –
- (a) publication in the Hong Kong Government Gazette on or before the date on which the tariff becomes effective;
 - (b) publication in the website of the licensee on or before the date on which the tariff becomes effective;

- (c) the Authority receiving a copy of the tariff on or before the date as specified by the Authority;
- (d) placing a copy of the tariff in a publicly accessible part of the principal place of business and other business premises of the licensee as specified by the Authority; and
- (e) supplying a copy of the relevant details to any person who may request it, at a charge no greater than is necessary to recover reasonable costs of making and supplying the copy.

7.3 The Authority may by direction in writing, for such period and on such conditions as the Authority may determine, direct that either one or any combination of Special Condition 7.2(a), (b), (c), (d) and (e), either completely or as to particular obligations imposed under them, shall not apply to the licensee.

8. NOTIFICATION OF DISCOUNTS

8.1 The licensee shall notify the Authority of any discount to its published tariffs offered for any of the services operated under this licence, other than those services listed in Schedule 6.

8.2 Notification of a discount shall be effected upon the Authority's receipt of a copy of the discount to a tariff, including such information prescribed in Schedule 5, at least one day before the discount becomes effective.

8.3 The Authority may publish any discount that the licensee notifies under Special Condition 8.1 after the discount becomes effective, if the Authority considers that it is in the public interest to do so.

8.4 For the purposes of this Special Condition, "discount" means the amount of any payment, credit, rebate, waiver, allowance, gift, or other benefit, directed to a customer, other than:

- (a) an amount in repayment of an amount overpaid to the licensee by that customer;
- (b) an amount in settlement of a disputed amount billed to that customer by the licensee;
- (c) an amount payable pursuant to a service level or service quality obligation of the licensee to the customer; or
- (d) the amount payable by a customer upon termination of service to that customer.

9. BILLING AND METERING ACCURACY

- 9.1 The licensee shall take all reasonable steps to ensure that any metering equipment and billing system used in connection with the service is accurate and reliable.
- 9.2 At the written request of the Authority or at regular intervals to be specified by the Authority, the licensee shall conduct tests on its metering equipment and billing system to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the relevant test or such other longer period as the Authority may determine.
- 9.3 The licensee shall keep such records of any metering equipment and billing system in such form as may be specified by the Authority and shall supply such records to the Authority as soon as reasonably practical following a written request from the Authority.

10. PROVISION OF SERVICE

- 10.1 The licensee shall, subject to Schedule 1 and any special conditions of this licence relating to the provision of the service, provide the service on its published terms and conditions and at the tariff published in

accordance with Special Condition 7 (as applicable) and at the discount notified to the Authority in accordance with Special Condition 8 (as applicable), on request of a customer whether or not the customer intends the service to be available for its own use or intends to utilize the service to provide a lawful telecommunications service to third parties.

10.2 Subject to Schedule 1 and any special conditions relating to the provision of the service, the licensee shall comply with a customer request for the service as tariffed by the licensee in accordance with Special Condition 7 where the service can reasonably be provided by the licensee to the customer utilizing the licensee's network in place at the time of the request.

10.3 The licensee shall not unreasonably delay or refuse to provide the service, or impose onerous conditions on the provision of the service, to any customer who owns or operates apparatus of a type which is approved by the Authority and conforms with the technical and performance standards specified in Schedule 3 to this licence. In particular (but without limiting the generality of the foregoing), the licensee shall not discriminate against any customer whose apparatus was acquired other than from the licensee.

11. DIRECTORY INFORMATION AND DIRECTORY INFORMATION SERVICE

11.1 For the purposes of this Special Condition –

(a) “directory information” means information obtained by the licensee in the course of the provision of services under this licence concerning or relating to all or any of the name, address, business and telephone numbers of each of its customers; and

(b) “raw directory information” means the licensee's directory information held in a basic format for the purpose of Special Condition 11.6, 11.7 and 11.8 relating to customers other than customers who request that directory information about them not be disclosed.

- 11.2 This Special Condition applies only in respect of standard printed directories and other directory databases and services which include all of the names of a licensee's customers listed in English language in alphabetical order, or in Chinese language in order of the number of strokes, or in such other language in an appropriate order as is kept by the licensee, and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.
- 11.3 Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall –
- (a) where and as directed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to customers, other than customers who request not to be included in a directory to be published (“the printed directory”); and
 - (b) where and as directed by the Authority, establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunications service whereby customers may, upon request, be provided with directory information other than that of customers who request the information relating to them not to be disclosed (“the telephonic directory service”).
- 11.4 The printed directory and the telephonic directory service provided under Special Condition 11.3 shall be made available free of charge, unless approved otherwise by the Authority, to all of the licensee's customers and shall be provided in a manner satisfactory to the Authority.
- 11.5 The licensee is permitted to make commercial arrangements with one or more of the other licensees who have the obligation to provide directory information, to co-operate in the provision jointly by them of either or both of the printed directory and the telephonic directory service which the licensee is required to provide under Special

Condition 11.3.

- 11.6 The licensee's printed directory shall be a unified printed directory and the licensee's telephonic directory service shall be a unified telephonic directory service and shall utilise a unified directory database, containing directory information as directed by the Authority, except for those customers who request that directory information about them not be disclosed. Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall, as directed by the Authority, provide, and regularly update, raw directory information, for which the licensee will be able to impose a reasonable charge, if applicable, to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees on a reasonable mode of exchange and transmission format for the raw directory information.
- 11.7 Where the licensee is unable to agree with another licensee pursuant to Special Condition 11.6 on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee to the Authority for determination. The licensee shall pay to the Authority, as he may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of such a determination or determination process.
- 11.8 Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another licensee other than for discharging its obligations under this Special Condition.
- 11.9 This Special Condition does not apply to the services described in Schedule 7 provided that -
- (a) the licensee (and where appropriate its agents, contractors and resellers) declares such service, in all promoting, marketing or

advertising materials concerning such service, as a “Class 2 service” (where the materials are in English text) (or “第二類服務” where the materials are in Chinese text); or

- (b) the licensee complies with such conditions as may be specified by the Authority in a direction that may be issued by the Authority.

12. EMERGENCY CALL SERVICE

- 12.1 Where the licensee provides the services described in Schedule 7, the licensee shall provide a public emergency call service by means of which any member of the public may, at any time and without incurring any charge, by means of compatible apparatus connected to the network of the licensees, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entities as directed by the Authority to report an emergency.
- 12.2 The licensee shall not charge for the use of the public emergency services described in Special Condition 12.1.
- 12.3 Unless otherwise directed by the Authority, emergency messages sent by a person using compatible apparatus connected to the network of the licensee shall be treated by the licensee on an equal basis irrespective of whether or not such apparatus has been registered as that of a customer of the licensee.
- 12.4 Where the licensee provides a public emergency call service pursuant to Special Condition 12.1 and the location of the customer making the call is potentially nomadic, the licensee shall in such manner as may be specified by the Authority maintain the most up-to-date location information of customers and provide free of charge to the Police Force, the Fire Service Department and other relevant Government agencies handling the emergency call service the relevant information relating to the location of a customer calling the emergency service described in Special Condition 12.1 for the sole purpose of responding to that call and (as appropriate) identification that the location of the customer making the call is potentially nomadic. Unless otherwise

directed by the Authority, the licensee shall provide a mechanism whereby the customers can update their location information and remind the customers to update their location information whenever they change the location from which the service is used.

13. RECORDS AND PLANS OF THE NETWORK

13.1 The Authority may disclose the network information in accordance with section 7I(3) of the Ordinance.

13.2 The licensee shall, at the reasonable request of any other licensee under the Ordinance if so authorized by the Authority, give reasonable access to its network information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of Special Condition 4 and section 36AA of the Ordinance. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such network information.

13.3 Where the licensee and any other licensee that has requested access to the network information in accordance with Special Condition 13.2 are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request, the matter at issue may be referred by either the licensee, the other licensee to the Authority for determination. The licensee shall pay to the Authority, as he may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of such a determination or determination process.

14. NETWORK LOCATION

14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.

- 14.2 The licensee shall keep accurate records of the location of the network installed under, in, over or upon any land.
- 14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- 14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.
- 14.5 The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunications installation laid or installed in Hong Kong.
- 14.6 The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the network.

15. CHANGES TO THE NETWORK

- 15.1 For the purposes of this licence, a change in the network is a material change where the implementation of the change would result in the network no longer being in compliance with any relevant technical standard which the Authority has power to issue.
- 15.2 The licensee shall notify the Authority of any proposals for material

changes to the network and provide him with such information as the Authority reasonably requires.

15.3 The licensee shall not, without the prior consent in writing of the Authority, make any material changes which might reasonably be anticipated by the licensee to affect -

- (a) any telecommunications service or installation connected to the network;
- (b) a person producing or supplying telecommunications apparatus for connection to the network;
- (c) a licensee under the Ordinance;
- (d) a licensee under the Broadcasting Ordinance (Cap. 562); or
- (e) a customer or a consumer of goods and services provided by any person or entity,

if the change is in the opinion of the Authority likely to require modifications or replacements to, or cessation in the production or supply of any of the telecommunications apparatus involved, or if the proposed alteration would require substantial network reconfiguration or rerouting.

15.4 The licensee shall prepare and publish, after consultation with the Authority, its procedures for consulting with and giving notice to persons likely to be affected materially by changes to its network which are required to be notified in accordance with Special Condition 15.2 and any other changes required to be notified pursuant to any technical standard which the Authority has power to issue. Subject to approval of the Authority, the notification procedures to each of the classes of persons likely to be affected under Special Condition 15.3 may differ having regard to the practicality and costs of notifying them.

16. REQUIREMENTS FOR ROAD OPENING

16.1 The licensee shall co-ordinate and co-operate with any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee under the Ordinance and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply with any guidelines issued by the Authority.

17. REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

17.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.

17.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –

- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
- (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

18. WORKS IN PUBLIC STREETS

18.1 Where in the course of installing or maintaining the network the

licensee needs to open or break up any public street the licensee shall –

- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
- (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
- (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and
- (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

19. INTERFERENCE WITH WORKS OF OTHERS

19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

19.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

20. LICENSEE TO ALTER NETWORK ON NOTICE

20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.

20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

21. WITHDRAWAL AND RETURN OF FREQUENCIES

21.1 Without prejudice to the generality of section 32H of the Ordinance, the Authority may by notice in writing withdraw any frequency previously assigned to the licensee if in the opinion of the Authority the licensee is not making efficient use of that frequency or in exceptional circumstances including where the public interest or international obligations of the Government so require, there is a serious breach of spectrum assignment conditions or serious interference between legitimate spectrum users has to be resolved or minimised.

21.2 The licensee may, subject to prior consent of and conditions specified by the Authority, return any frequency previously assigned to it.

22. UNIVERSAL SERVICE CONTRIBUTION

- 22.1 Where directed by the Authority, the licensee shall pay to one or more fixed carrier licensees or unified carrier licensees or other licensees with a universal service obligation, as the case may be, its relevant share of the universal service contribution to assist those licensees to meet their universal service obligations, if any.
- 22.2 Any universal service contribution shall be subject to periodic review by the Authority as to description and quantum and the licensee shall pay its relevant share of such universal service contribution as the Authority may direct following a review. On the completion of an periodic review, the Authority may supply the licensee such information as the Authority is reasonably able to supply, and subject to any duty of confidentiality, as to the basis on which the universal service contribution is calculated.
- 22.3 For the purpose of this Special Condition 22, the following definitions shall apply –
- (a) Universal service contribution is that sum calculated in accordance with a formula adopted periodically by the Authority, to ensure that any licensee with a universal service obligation (referred to as “universal service provider” in this Special Condition), receives a fair contribution from other licensees as specified by the Authority for serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.
 - (b) Universal service obligation is the obligation by a licensee to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous basic service is reasonably available, subject to the Ordinance and the conditions of its licence, and to provide that basic service in such manner.

23. CIRCUMSTANCES OUTSIDE LICENSEE'S CONTROL

23.1 For the avoidance of doubt, General Condition 17.1 of the licence shall apply to these special conditions and the Authority may at his discretion, and on such conditions as he thinks fit, extend any time period within which the obligations of the licensee under these special conditions may be met.

23.2 In exercising his discretion under Special Condition 23.1 with respect to any of the special conditions of the licence, the Authority shall take into account including, without limitation, whether circumstances are such that it would be unreasonable to require compliance by the licensee with the relevant special condition.

24. INSURANCE

24.1 Throughout the currency of this licence, the licensee shall have and maintain a valid insurance policy with a reputable insurance company to cover its third party liabilities in respect of personal injury, death and damage to property, arising out of or in connection with the installation, maintenance and operation of the network or provision of the service. The amount of insurance shall be at least HK\$10,000,000 per occurrence or such sum as the Authority may notify in writing in future.

25. USE OF PUBLIC FACILITIES FOR PROVISION OF SERVICES

25.1 Without limiting or affecting in any way the licensee's obligations under any other condition of this licence, the licensee shall comply with any guidelines or codes of practice which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of the use of Government facilities as well as facilities on Government property and unleased Government land for the provision of services under this licence.

26. LOCATION SERVICES

26.1 Without affecting the generality of General Condition 7, “information of a customer” referred to in General Condition 7.1 and “information provided by its customers or obtained in the course of provision of service to its customers” referred to in General Condition 7.2 shall include any information concerning the locations of customers obtained in the course of provision of the service.

26.2 Where the licensee provides services to customers using the information concerning the locations of the customers obtained in the course of provision of the service, the licensee shall ensure that –

- (a) no such services are provided without the prior consent of the relevant customers; and
- (b) the customers are capable of suspending the use of the information from time to time.

27. PROVISION OF SERVICE TO SUSPECTED STOLEN RADIOCOMMUNICATIONS APPARATUS

27.1 The licensee shall, where directed by the Authority, refuse to provide the service to any person who possesses or uses a radiocommunications apparatus which is stolen or suspected stolen goods.

28. BACKUP POWER SUPPLY

28.1 The licensee shall conform to any guideline or code of practice issued by the Authority in respect of the provision of backup power supply to the service.

28.2 Unless there is backup power supply available in such manner as may be specified by the Authority to maintain continuity of the service

without any deterioration in quality of the service during interruption of mains power supply on the customer's premises, to the network, or to any system or equipment delivering the service to the customer, the licensee shall not provide the service to users whose "lifeline devices" are connected to the service.

28.3 Where no backup power supply is available in such manner as described in Special Condition 28.2, the licensee is deemed to have complied with Special Condition 28.2 if –

(a) the customers have, before or upon subscription of service, confirmed that the Service will not be used by lifeline users or connected with lifeline devices; and

(b) the licensee has affixed a label to the wall socket panel or any equipment installed on the customers' premises or taken other reasonable steps to remind the customers that the service is not suitable for connection to lifeline devices.

28.4 In this Special Condition, a "lifeline device" means a medical alarm or any other device for an elderly, infirm or invalid to summon assistance in the event of an emergency without having to dial manually the telephone number of the emergency service.

29. PUBLICATION OF ACCOUNTING RATES AND SETTLEMENT RATES

29.1 The Authority may at his discretion publish any information obtained from the licensee concerning international accounting rates, settlement rates or any other relevant information concerning the charge paid by the licensee to overseas carriers or service providers for delivery of external traffic.

30. PROVISION OF INFORMATION TO CUSTOMERS

30.1 Without prejudice to the other terms and conditions of this licence, the

licensee shall provide or make available the following information to the customers when the services are offered –

- (a) Name of the licensee;
- (b) Licence number of the licensee under this licence;
- (c) Customer service hotline number(s);
- (d) Where applicable, the access code(s) or number(s) (including any access password) used for obtaining the services;
- (e) Instructions on how to access the services;
- (f) The tariffs under which the services are offered; and
- (g) The duration or validity period of the services offered.

31. ROLLOUT OF NETWORK

- 31.1 Save with the prior approval of the Authority in writing, the licensee shall roll out the network to achieve a coverage not less than, and at a time not later than, what is specified in the following parts of its application for this licence dated []:
- [relevant parts of the applications to be listed]
- [The need and wording of this special condition will be decided on a case-by-case basis after reviewing the applicant's application.]*

32. DISPOSAL OF ASSETS

- 32.1 If a licensee is (1) in a dominant position in the relevant telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation specified under the Ordinance; or (3) required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, unless with the prior written consent of the Authority (which consent shall not be

unreasonably withheld or delayed), the licensee shall not during the validity period of this licence dispose or agree to dispose of any interest (as determined in accordance with Special Condition 32.2) in the assets or undertaking of the licensee which, cumulatively with the value of any and all disposals or agreements to dispose of interests in those assets or undertaking prior to the disposal or agreement in question and after the date of issue of this licence, exceeds 15% as at the date of the disposal or agreement in question of the net asset value of the licensee (as determined in accordance with Special Condition 32.2).

32.2 The value of any interest or undertaking, and the net asset value, of the licensee shall be determined by a certified public accountant (practising) (being one who has the qualifications as prescribed under the Professional Accountants Ordinance (Cap. 50)) as may be nominated, or whose appointment by the licensee is agreed in writing, by the Authority.

32.3 In the event of any dispute between the Authority and the licensee as to the value of the interest, undertaking or the net asset value referred to in Special Condition 32.1, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).”

32.4 For the purpose of Special Condition 32.1,

- (1) where the licensee is in a dominant position in the relevant telecommunications market, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its dominant position in that relevant telecommunications market;
- (2) where the licensee is subject to a universal service obligation, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the universal service obligation;

- (3) where the licensee is required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the payment of spectrum utilization fee for the provision of mobile or wireless carrier services under this licence.

33. ACCESS TO BUILDINGS

- 33.1 The licensee shall not enter into any agreement, arrangement or understanding, whether legally enforceable or not, with any person, or receive any unfair advantage from a business carried on by it or any other person (whether associated or affiliated with it or not), which, in the opinion of the Authority, has or is likely to have the purpose or effect of preventing or restricting fair and non-discriminatory access to any buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of service similar to the service by other operators licensed by the Authority.
- 33.2 The licensee shall comply with any guidelines or codes of practice that may from time to time be issued by the Authority for the facilitation and coordination of fair, non-discriminatory and orderly access to buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of the service and other services similar to the service by other operators licensed by the Authority
- 33.3 Without prejudice and in addition to Section 18 of the Ordinance and General Condition 9, the licensee shall not, in providing, establishing, operating, adjusting, altering, replacing, removing or maintaining any telecommunications line or telecommunications installation in, over or upon any land for the purposes of this licence, obstruct, interfere with, or cause or permit damage to, any other telecommunications line or telecommunications installation, or means of telecommunications or telecommunications service or any gas or water pipe or main or any

drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current.

34. PAYMENT OF SPECTRUM UTILIZATION FEE

34.1 The licensee shall pay spectrum utilization fees (“SUF”) for spectrum assigned to the licensee as designated by the Authority by order and at such level or according to the method of determining the SUF as prescribed by the Secretary by regulation. The licensee shall pay the SUF to the Authority during the period while the licence remains in force. If the licensee fails to make the concerned payment when due, the Authority may charge interest on any overdue amount from the date on which the relevant amount is due until the date of actual payment (both days inclusive) at a rate determined by the Authority to compensate it for the payment being overdue.

35. CHANNELS WITHIN IN-BUILDING COAXIAL CABLE DISTRIBUTION SYSTEMS

35.1 Subject to Special Conditions 35.2, 35.3, 35.4, 35.5, 35.6 and 35.7, the service operated over the in-building coaxial cable distribution systems (“IBCCDS”) of the network shall use only such channels as may from time to time be assigned by the Authority and for such purposes and under such conditions as may be specified by the Authority by notice in writing to the licensee.

35.2 The licensee shall accept that regulation of the use of channels within the IBCCDS of the network by the Authority is necessary because of the limitation in the number of channels available and the existence of competing demand for the channels.

35.3 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it to carry the service, if having given the licensee sufficient opportunities to make representations, the Authority forms the opinion

that the licensee is not making efficient use of that channel.

- 35.4 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to vary the purposes for which and the conditions under which the channels are to be used.
- 35.5 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it by the Authority to carry the service and to use such new channel at its own expenses as the Authority may assign.
- 35.6 The licensee shall comply with any notice that may from time to time be issued by the Authority under this Special Condition 35.
- 35.7 The licensee shall comply with the guidelines and codes of practice issued by the Authority from time to time on the use of the IBCCDS channels.

36. SERVICE CONTRACTS AND DISPUTE RESOLUTION

- 36.1 The licensee shall comply with all codes of practice issued by the Authority from time to time in respect of the requirements to apply in the contracting of telecommunications services to end users.
- 36.2 The contracting requirements referred to in Special Condition 36.1 may include the following –
- (a) the style, format and structure of service contract documentation;
 - (b) the manner of entering into and terminating service contracts;
 - (c) the information to be included in or in connection with service contracts and the performance of the services;
 - (d) the submission of disputes between end users and the providers of telecommunications services to independent dispute resolution, pursuant to a scheme approved by the

- Authority; and
- (e) other terms and conditions or provisions for the protection of the interests of end users.

36.3 Before issuing any code of practice for the purposes of Special Condition 36.1, the Authority shall carry out such consultation as is reasonable in the circumstances.

37. INTERPRETATION

37.1 For the avoidance of doubt and for the purposes of these Special Conditions –

“mobile virtual network operator” means the holder of public non-exclusive telecommunications services licence for provision of mobile virtual network operator services;

“services-based operator” means the holder of a service-based operator licence

38.2 Any reference to an ordinance or a regulation, whether the word is used by itself or as part of any title to an ordinance or a regulation, shall mean that ordinance or regulation for the time being in force as well as any modification or substitution of that ordinance or regulation, in whole or in part, and all subsidiary legislation, regulations, directions, codes of practice and instruments made under that ordinance or regulation and for the time being in force.

37.3 The singular includes the plural and vice versa.

SCHEDULE 1
SCOPE OF THE SERVICE

SCHEDULE 2
DESCRIPTION OF NETWORK

SCHEDULE 3
TECHNICAL PARTICULARS OF RADIO STATIONS FOR
THE PROVISION OF THE SERVICE

SCHEDULE 4

REGULATORY ACCOUNTING AND INFORMATION PROVISION REQUIREMENTS

1. Accounting information according to the practices as directed by the Authority under Special Condition 5 for each service provided under this licence or as specified by the Authority.

SCHEDULE 5

TERMS OF DISCOUNT TO PUBLISHED TARIFFS

1. Prices of service after discount.
2. Duration of discount.
3. Duration of offer.
4. General description of promotion plan including but not limited to eligible customers and tie-in period.
5. Conditions governing premature termination.
6. Others as specified by the Authority.

SCHEDULE 6

**EXEMPTION FROM NOTIFICATION OF DISCOUNTS UNDER
SPECIAL CONDITION 8.1**

SCHEDULE 7
DESCRIPTION OF SERVICES
REFERRED TO IN SPECIAL CONDITIONS 11 AND 12

An internal telecommunications service

- (a) for carrying real-time voice communications (which may be integrated with other types of communications) to and from parties assigned with numbers from the numbering plan of Hong Kong as stipulated in Special Condition 4.1; and
- (b) to which customers are assigned numbers from the numbering plan of Hong Kong as stipulated in Special Condition 4.1 by the licensee.

ANNEX C

Origins of Special Conditions in the UCL

SCs for UCL		ORIGINS⁵⁴
SC1	Compliance with Codes of Practice	SC1 of 2G MC licence SC2 CDMA MC licence SC13 of SBO licence SC15 of Section 8(1)aa class licence
SC2	Purchase of Assets	SC21 of ex-post FC licence SC23 of ex-ante FC licence or SC5 of MC licence
SC3	Requirements for Interconnection	SC3 of FC licence SC6 of MC licence
SC4	Numbering Plan and Number Portability	SC4 of FC licence SC10 of MC licence
SC5	Accounting Practices	SC5 of FC licence SC7 of MC licence
SC6	Requirement to Furnish Information to the Authority	SC6 of FC licence
SC7	Tariffs	SC7 of FC licence SC14 of 2G/3G licence SC13 of CDMA licence
SC8	Notification of Discounts	SC8 of ex-post FC licence
SC9	Billing and Metering Accuracy	SC9 of ex-post FC licence SC11 of ex-ante FC licence SC8 of MC licence
SC10	Provision of Service	SC2 of FC licence and SC11 of MC licence
SC11	Directory Information and Directory Information Service	SC10 of ex-post FC licence SC12 of ex-ante FC licence SC19 of 2G/3G MC licence SC 18 of CDMA licence
SC12	Emergency Call Service	SC11 of ex-post FC licence SC13 of ex-ante FC licence SC9 of MC licence
SC13	Records and Plans of the Network	SC12 of ex-post FC licence SC14 of ex-ante FC licence
SC14	Network Location	SC13 of ex-post FC licence or SC15 of ex-ante FC licence
SC15	Changes to the Network	SC14 of ex-post FC licence or

⁵⁴ If not specified, Fixed Carrier (FC) licence refers to both versions of ex-ante and ex-post while Mobile Carrier (MC) licence refers to MC licences for the provision of 3G, 2G and CDMA mobile services

SCs for UCL		ORIGINS⁵⁴
		SC16 of ex-ante FC licence
SC16	Requirements for Road Opening	SC15 of ex-post FC licence SC17 of ex-ante FC licence
SC17	Requirements of Installation of Lines or Cables	SC16 of ex-post FC licence SC18 of ex-ante FC licence
SC18	Works in Public Streets	SC17 of ex-post FC licence SC19 of ex-ante FC licence
SC19	Interference with Works of Others	SC18 of ex-post FC licence SC20 of ex-ante FC licence
SC20	Licensee to Alter Network On Notice	SC19 of ex-post FC licence SC21 of ex-ante FC licence
SC21	Withdrawal and Return of Frequencies	SC3 of 2G MC licence
SC22	Universal Service Contribution / Universal Service Obligation	SC25 of ex-ante FC licence SC1 of ex-post FC licence
SC23	Circumstances outside Licensee's Control	SC22 of ex-post FC licence SC26 of ex-ante FC licence
SC24	Insurance	SC23 of ex-post FC licence SC29 of ex-ante FC licence
SC25	Use of Public Facilities for Provision of Services	SC 11/18 in four FTNS licences ⁵⁵ SC 24 in one ex post FC licence ⁵⁶
SC26	Location Services	SC23/SC22/SC12 of 3G/2G/CDMA MC licence
SC27	Provision of Service to Suspected Stolen Radiocommunications Apparatus	SC20 of 2G/CDMA MC licence
SC28	Backup Power Supply	SC21 in one FTNS licence ⁵⁷ SC 19 in SBO licence
SC29	Publication of Accounting Rates And Settlement Rates	SC27 / 29 in ex-ante FC licence for external FTNS SC24 in one ex-post FC licence ⁵⁸
SC30	Provision of Information to Customers	SC9 of SBO licence SC5 of Section 8(1)aa class licence

⁵⁵ The FTNS licences of HGC, WTT, NWT and HKBN

⁵⁶ The FC licence of PCCW

⁵⁷ The FTNS licence of SCL

⁵⁸ The FC licence of Reach Networks Hong Kong Limited, Reach Cable Networks Limited and Reach Global Services Limited ("Reach")

SCs for UCL		ORIGINS⁵⁴
SC31	Rollout of Network	SC1 of 3G/CDMA MC licence SC1 of some FTNS licences ⁵⁹ SC27 in one ex-post FC licence ⁶⁰
SC32	Disposal of Assets	SC 1 of ex-ante FC licence SC4 of MC licence
SC33	Access to Buildings	SC15 in some FTNS licences ⁶¹ Also in some FC licences of broadcasters ⁶²
SC34	Payment of Spectrum Utilization Fee	SC2 of 2G/3G MC licence
SC35	Channels Within In-Building Coaxial Cable Distribution Systems	SC7 in some FTNS licences ⁶³ Also in some FC licences of broadcasters ⁶⁴
SC36	Service Contracts and Dispute Resolution	Not applicable
SC37	Interpretation	SC24/ 23/ 22 of 3G/2G/CDMA MC licence

⁵⁹ SC1 of FTNS licences of Hutchison Global Communications Limited (“HGC”), Wharf T&T Limited (“WTT”), New World Telecommunications Limited (“NWT”), HKBN, Towngas and SCL.

⁶⁰ FC licence of Reach.

⁶¹ SC15 in FTNS licences of HKBN, Towngas and SCL, also in SC 23 of TVB/ATV’s FC licence and SC34 of HKCTV’s FC licence.

⁶² SC 16 and 23 in FC licences of Asia Television Limited (“ATV”) and Television Broadcasts Limited (“TVB”). Also in SC 34 and 36 of HKCTV’s FC licence.

⁶³ SC7 in FTNS licences of HKBN, Towngas and SCL.

⁶⁴ SC22 of FC licences of ATV and TVB; and SC29 of HKCTV’s FC licence.

**Proposed Special Condition 22 on Universal Service Obligation
under the UCL applicable to a Universal Service Provider**

22. UNIVERSAL SERVICE OBLIGATION

- 22.1 As required by the Authority pursuant to Section 35B of the Ordinance, the licensee shall provide, maintain and operate the network to the satisfaction of the Authority in such manner as to ensure that, subject to Special Conditions 22.2 and 22.3, a good, efficient and continuous basic service is reasonably available, subject to the Ordinance, to all persons in Hong Kong.
- 22.2 The Authority may, subject to such conditions as he thinks fit, including but not limited to conditions as to duration, exempt the licensee from all, or part of, the universal service obligation with respect to in a specified area, or areas if he is reasonably satisfied that the basic service in that area, or areas, is, or is capable of being met by any other fixed carrier or unified carrier licensee and that in the circumstances it would be unreasonable or unnecessary for the licensee to be required to also provide the basic service.
- 22.3 The licensee shall supply the basic service to any person, on its usual terms and conditions, within a reasonable period of a request for basic service at the tariff as published in accordance with Special Condition 7⁶⁵.
- 22.4 For the purpose of this Special Condition 22, the following definitions shall apply –
- (c) Universal service contribution is that sum calculated in accordance with a formula adopted periodically by the Authority, to ensure that any licensee with a universal service obligation (referred to as “universal service provider” in this Special Condition), receives a fair contribution from other licensees as

⁶⁵ This refers to the specific SC under the UCL on “Tariffs”.

specified by the Authority for serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.

- (d) Universal service obligation is the obligation by a licensee to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous basic service is reasonably available, subject to the Ordinance and the conditions of its licence, and to provide that basic service in such manner.

22.4 The licensee is entitled to receive its relevant share of a universal service contribution to assist it in meeting its universal service obligation and the licensee shall pay its relevant share of a universal service contribution to any other universal service provider as the Authority may direct. Any such universal service contribution shall be subject to periodic review by the Authority as to description and quantum. On the completion of a periodic review, the Authority may supply the licensee such information as the Authority is reasonably able to supply, and subject to any duty of confidentiality, as to the basis on which the universal service contribution is calculated.

22.5 Subject to the formula adopted by the Authority, if the external telecommunications services of the licensee, where it has a universal service obligation, are provided to other parties by the licensee on wholesale level and the external telecommunications services are then provided to customers by such other parties on retail level:

- (a) the relevant wholesale revenues of the licensee in relation to the provision of its external telecommunications services to non-associated or non-affiliated companies shall be considered as relevant revenues in the calculation of universal service contribution;
- (b) the relevant retail revenues of the associated or affiliated companies of the licensee in relation to the provision of the licensee's external telecommunications services to customers

directly connected to the licensee shall be considered as relevant revenues in the calculation of universal service contribution;

- (c) the relevant wholesale costs of the licensee in relation to the provision of its external telecommunications services to both (i) associated or affiliated companies; and (ii) non-associated or non-affiliated companies, shall be considered as relevant costs in the calculation of universal service contribution; and
- (d) the relevant retail costs (excluding the wholesale price received by the licensee) of the associated or affiliated companies of the licensee in relation to the provision of the licensee's external telecommunications services to customers directly connected to the licensee shall be considered as relevant costs in the calculation of universal service contribution.

22.6 For the purpose of Special Condition 22.5, the licensee shall provide information in relation to the provision of the licensee's external telecommunications services (including but not limited to the relevant traffic statistics, the relevant cost and revenue information as mentioned in Special Condition 22.5).

22.7 The licensee shall be jointly and severally liable for the acts and conducts of the affiliated or associated companies (as mentioned in Special Condition 22.5), in relation to the provision of the licensee's external telecommunications services to customers, under this licence and the Ordinance.
